

Maine Revised Statutes

**Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES**  
**HEADING: PL 1995, c. 560, Pt. K, §7 (rpr); 2001, c. 354, §3 (amd)**

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**Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES**  
**HEADING: PL 1995, C. 560, PT. K, §7 (RPR); 2001, C. 354, §3 (AMD)**  
**Chapter 1: GENERAL PROVISIONS**

Subchapter 1: DEFINITIONS

**§1001. DEFINITIONS**

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 459, §7 (NEW).]

**1. Chief administrative officer.** "Chief administrative officer" means the head of a state institution or the head of any other institution which provides services which fall under the jurisdiction of the department.

[ 1983, c. 459, §7 (NEW) .]

**1-A. Adult developmental services.** "Adult developmental services" means any support or assistance provided, licensed or funded in whole or in part by the department pursuant to chapter 5 or 6 to an adult with an intellectual disability or autism.

[ 2011, c. 542, Pt. A, §60 (NEW) .]

**2. Client.** "Client" means a person receiving services from the department, from any state institution or from any agency licensed or funded to provide services falling under the jurisdiction of the department.

[ 1995, c. 560, Pt. K, §8 (AMD); 1995, c. 560, Pt. K, §83 (AFF) .]

**3. Commissioner.** "Commissioner" means the Commissioner of Health and Human Services or the commissioner's designee, except that when the term "commissioner and only the commissioner" is used, the term applies only to the person appointed Commissioner of Health and Human Services and not to any designee.

[ 1995, c. 560, Pt. K, §9 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2003, c. 689, Pt. B, §7 (REV) .]

**4. Department.** "Department" means the Department of Health and Human Services.

[ 1983, c. 459, §7 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

**4-A. Office of advocacy.**

[ 2005, c. 519, Pt. RR, §4 (AFF); 2005, c. 519, Pt. RR, §1 (RP) .]

**4-B. Intermediate care facility for persons with intellectual disabilities.** "Intermediate care facility for persons with intellectual disabilities" means an intermediate care facility for the mentally retarded as defined in Section 1905(d) of the federal Social Security Act, 42 United States Code, Section 1396d(d) and its implementing regulations.

[ 2011, c. 542, Pt. A, §60 (NEW) .]

**5. Parking area.** "Parking area" means land maintained by the State at the state institutions under the jurisdiction of the department, which may be designated as parking areas by the heads of the state institutions.

[ 1983, c. 459, §7 (NEW) .]

**6. Public way.** "Public way" means a road or driveway on land maintained by the State at the state institutions under the jurisdiction of the department.

[ 1983, c. 459, §7 (NEW) .]

**7. Resident.** "Resident" means a person residing in a state institution or in any other institution which provides services which fall under the jurisdiction of the department.

[ 1983, c. 459, §7 (NEW) .]

**8. State institution.** "State institution" means:

A. The Riverview Psychiatric Center; [1983, c. 459, §7 (NEW); 2005, c. 236, §4 (REV) .]

B. The Dorothea Dix Psychiatric Center; or [2005, c. 236, §3 (REV); 2005, c. 457, Pt. NN, §1 (AMD); 2005, c. 457, Pt. NN, §8 (AFF) .]

C. [1995, c. 395, Pt. G, §20 (AFF); 1995, c. 395, Pt. G, §10 (RP) .]

D. Before October 1, 2008, the Elizabeth Levinson Center. [2007, c. 539, Pt. N, §57 (AMD) .]

E. [2005, c. 457, Pt. NN, §8 (AFF); 2005, c. 457, Pt. NN, §2 (RP) .]

F. [1997, c. 393, Pt. A, §39 (RP) .]

F. [1995, c. 560, Pt. K, §10 (RP) .]

G. [1995, c. 560, Pt. K, §11 (NEW); T. 34-B, §1001, sub-§8, ¶G (RP) .]

H. [2005, c. 457, Pt. NN, §8 (AFF); 2005, c. 457, Pt. NN, §3 (RP) .]

[ 2007, c. 539, Pt. N, §57 (AMD) .]

**9. Written political material.** "Written political material" means flyers, handbills or other nonperiodical publications which are subject to the restrictions of Title 21-A, chapter 13.

[ 1985, c. 506, Pt. A, §70 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 506, §A70 (AMD). 1993, c. 410, §CCC9 (AMD). RR 1995, c. 2, §82 (COR). 1995, c. 395, §G10 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 550, §§1,2 (AMD). 1995, c. 560, §§K8-11,82 (AMD). 1995, c. 560, §K83 (AFF). 1997, c. 393, §§A38,39 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §§B6,7 (REV). 2005, c. 236, §§3,4 (REV). 2005, c. 457, §§NN1-3,001 (AMD). 2005, c. 457, §§NN8,005 (AFF). 2005, c. 519, §RR1 (AMD). 2005, c. 519, §RR4 (AFF). 2007, c. 539, Pt. N, §57 (AMD). 2011, c. 542, Pt. A, §60 (AMD).

## Subchapter 2: DEPARTMENT

### §1201. ESTABLISHMENT (REPEALED)

#### SECTION HISTORY

1983, c. 459, §7 (NEW). RR 1995, c. 2, §83 (COR). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §§1,3 (AMD). 2007, c. 539, Pt. N, §58 (RP).

### **§1201-A. SERVICE DELIVERY REGIONS**

*(REPEALED)*

#### SECTION HISTORY

1991, c. 781, §D2 (NEW). 1991, c. 781, §D4 (AFF). 1995, c. 560, §§K12,13 (AMD). 2005, c. 397, §A42 (AMD). 2007, c. 539, Pt. N, §59 (RP).

### **§1201-B. JOINT LOCATION OF SERVICES**

*(REPEALED)*

#### SECTION HISTORY

1993, c. 738, §F2 (NEW). 2007, c. 539, Pt. N, §60 (RP).

### **§1202. OFFICE OF THE COMMISSIONER**

*(REPEALED)*

#### SECTION HISTORY

1983, c. 459, §7 (NEW). RR 1995, c. 2, §84 (COR). 1995, c. 368, §§GG2,3 (AMD). 1995, c. 395, §§C2,3 (AMD). 2001, c. 354, §3 (AMD). 2001, c. 439, §§J4,J5 (AMD). 2003, c. 689, §B7 (REV). 2007, c. 539, Pt. N, §61 (RP).

### **§1203. DUTIES OF THE COMMISSIONER**

*(REPEALED)*

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 503, §2 (AMD). 1987, c. 744, §12 (AMD). 1989, c. 335, §1 (AMD). 1995, c. 15, §1 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §L13 (AMD). 1995, c. 560, §L16 (AFF). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 236, §§3,4 (REV). 2007, c. 80, §1 (AMD). 2007, c. 539, Pt. N, §62 (RP).

### **§1203-A. LICENSES**

Licenses to operate, conduct or maintain an agency or facility for the provision of mental health services as defined in section 3601 or for the provision of treatment as defined in chapter 6, subchapter 2, including facilities that are private nonmedical institutions, are governed as follows. [2003, c. 673, Pt. V, §6 (AMD); 2003, c. 673, Pt. V, §29 (AFF).]

**1. Full license.** Full licenses are governed as follows.

A. The commissioner shall issue a full license to an applicant agency or facility that has complied with:

(1) All applicable laws and rules; and

(2) All conditions imposed by the commissioner at the time of issuance of a conditional license, refusal to issue or renew a full license or revocation of a full license. [1989, c. 227, §1 (NEW).]

B. A full license must be issued for a specified period of time appropriate to the type of agency or facility, but not to exceed 3 years. [2003, c. 369, §1 (AMD); 2003, c. 369, §2 (AFF).]

C. When a full licensee fails to comply with applicable laws and rules, the commissioner may:

(1) File a complaint with the District Court to have the license revoked, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375; or

(2) Modify the full license to a conditional license in accordance with subsection 2. [1989, c. 227, §1 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

[ 2003, c. 369, §1 (AMD); 2003, c. 369, §2 (AFF) .]

## **2. Conditional license.** Conditional licenses are governed as follows.

A. The commissioner may issue a conditional license to an agency or facility reapplying for a full license, if:

(1) The applicant fails to comply with applicable laws and rules; and

(2) In the judgment of the commissioner, the best interests of the public would be served by issuance of a conditional license. [1989, c. 227, §1 (NEW).]

B. The commissioner may modify an existing full license to a conditional license, after affording the full licensee an opportunity for hearing in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, if:

(1) The applicant fails to comply with applicable laws and rules; and

(2) In the judgment of the commissioner, the best interests of the public would be served. [1989, c. 227, §1 (NEW).]

C. A conditional license shall be issued for a specified period of time, not to exceed one year, or the remaining period of the previous full license, whichever the commissioner determines appropriate based on the nature of the violation of laws or rules. [1989, c. 227, §1 (NEW).]

D. A conditional license shall specify the conditions imposed by the commissioner and shall specify when those conditions shall be complied with during the term of the conditional license. [1989, c. 227, §1 (NEW).]

E. During the period of the conditional license, the licensee shall comply with all conditions imposed by the commissioner. [1989, c. 227, §1 (NEW).]

F. If the conditional licensee fails to comply with conditions imposed by the commissioner, the commissioner may initiate proceedings to revoke, suspend or refuse to renew the conditional license in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1989, c. 227, §1 (NEW).]

[ 1989, c. 227, §1 (NEW) .]

## **3. Provisional license.** Provisional licenses are governed as follows.

A. The commissioner may issue a provisional license to an agency or facility that:

(1) Has not been previously licensed for the type of service for which application is made;

(2) Is temporarily unable to comply with all applicable laws and rules; and

(3) Is in compliance with specific laws and rules determined by the commissioner as essential for the protection of the residents or clients of the agency or facility. [1989, c. 227, §1 (NEW) .]

B. To obtain a provisional license, an applicant must demonstrate the ability to comply with all applicable laws and rules by the end of the term of the provisional license. [1989, c. 227, §1 (NEW) .]

C. A provisional license shall be issued for a specified period of time, which is at least 3 months but no longer than 12 months, as determined appropriate by the commissioner. [1989, c. 227, §1 (NEW) .]

[ 1989, c. 227, §1 (NEW) .]

**4. Fees.** The fee for all types of licenses is \$25, except for those facilities defined in Title 22, section 8101, subsection 4 and licensed in accordance with Title 22, section 8104.

[ 1989, c. 227, §1 (NEW) .]

**5. Monitoring for compliance.** Regardless of the term of the license, the commissioner shall monitor the licensee, at least once a year, for continued compliance with applicable laws and rules.

[ 1989, c. 227, §1 (NEW) .]

**6. Appeals.** Any person aggrieved by a final action of the commissioner under this section may obtain judicial review in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

[ 1989, c. 227, §1 (NEW) .]

**7. Prohibited acts.** Prohibited acts under this section are governed as follows.

A. An agency is guilty of unlicensed operation of a mental health service facility if it operates, conducts or maintains such a facility, not otherwise licensed as a hospital or medical care facility, without a license from the commissioner. [1989, c. 227, §1 (NEW) .]

B. Notwithstanding Title 17-A, sections 4-A and 1301, unlicensed operation of a mental health service facility is punishable by a fine of not more than \$500 or by imprisonment for not more than 60 days. [1989, c. 227, §1 (NEW) .]

[ 1989, c. 227, §1 (NEW) .]

**8. National accreditation.** An agency or facility required to obtain a license under this section that receives and maintains accreditation from a national accrediting body approved by the department must be deemed in compliance with comparable state licensing rules upon its submission to the department of written evidence of compliance including, but not limited to, national accreditation approval, reports, findings and responses. The department may review compliance under this subsection in response to a complaint against the agency or facility.

[ 2011, c. 145, §3 (NEW) .]

#### SECTION HISTORY

1989, c. 227, §1 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 369, §1 (AMD). 2003, c. 369, §2 (AFF). 2003, c. 673, §V6 (AMD). 2003, c. 673, §V29 (AFF). 2011, c. 145, §3 (AMD).

## §1204. POWERS OF THE COMMISSIONER

*(REPEALED)*

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 729, §7 (AMD). 1983, c. 816, §C2 (AMD). 1985, c. 503, §3 (AMD). 1985, c. 785, §B162 (AMD). 1989, c. 265, §2 (AMD). 1989, c. 501, §P29 (AMD). 1989, c. 933, §§1,2 (AMD). 1991, c. 567, §1 (AMD). 1991, c. 711, §5 (AMD). 1993, c. 410, §§CCC10,11 (AMD). 1993, c. 667, §1 (AMD). 1995, c. 368, §GG4 (AMD). 1995, c. 395, §§C4,G11 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 560, §§K14-17 (AMD). 1995, c. 560, §K83 (AFF). 1995, c. 691, §3 (AMD). 1997, c. 676, §5 (AMD). 1999, c. 731, §L2 (AMD). 2001, c. 194, §1 (AMD). 2001, c. 439, §§J6,7 (AMD). 2001, c. 493, §1 (AMD). 2005, c. 236, §§3,4 (REV). 2007, c. 286, §1 (AMD). 2007, c. 539, Pt. N, §63 (RP).

## §1205. OFFICE OF ADVOCACY

*(REPEALED)*

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1987, c. 744, §§13-15 (AMD). 1989, c. 7, §N3 (RPR). 1989, c. 731, §§1-3 (AMD). 1995, c. 560, §K18 (AMD). 2005, c. 397, §§A43-46 (AMD). 2005, c. 457, §OO2 (AMD). 2005, c. 457, §OO5 (AFF). 2005, c. 519, §RR4 (AFF). 2005, c. 519, §RR2 (RPR). 2007, c. 356, §5 (RP). 2007, c. 356, §31 (AFF). 2007, c. 356, §4 (RP).

## §1206. OFFICE OF CHILDREN'S SERVICES

*(REPEALED)*

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 503, §4 (RP).

## §1207. CONFIDENTIALITY OF INFORMATION

*(CONFLICT)*

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

**1. Generally.** All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client shall be kept confidential and may not be disclosed by any person, except that:

A. A client, his legal guardian, if any, or, if he is a minor, his parent or legal guardian may give his informed written consent to the disclosure of information; [1985, c. 582, (AMD).]

B. (TEXT REPEALED 8/1/17) (CONFLICT: Text as amended by PL 2013, c. 434, §7) Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; or the provision of mental health services by the Department of Corrections pursuant to Title 34-A, section 3031, 3069-A or 3069-B. This paragraph is repealed August 1, 2017; [2013, c. 434, §7 (AMD).]



B. (TEXT REPEALED 8/1/17) (CONFLICT: Text as amended by PL 2013, c. 434, §7) Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; or the provision of mental health services by the Department of Corrections pursuant to Title 34-A, section 3031, 3069-A or 3069-B. This paragraph is repealed August 1, 2017; [ 2013 , c . 434 , §7 (AMD) . ]

B. (CONFLICT: Text as amended by PL 2013, c. 132, §1) Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the provisions of section 1931; the purposes of section 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; or the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; [ 2013 , c . 132 , §1 (AMD) . ]

B-1. [ 2005 , c . 397 , Pt . A , §48 (RP) . ]

B-2. [ 2007 , c . 466 , Pt . A , §56 (RP) . ]

B-3. (TEXT EFFECTIVE 8/1/17) Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; or the investigation and hearing pursuant to Title 15, section 393, subsection 4-A. This paragraph takes effect August 1, 2017; [ 2013 , c . 434 , §8 (NEW) . ]

C. Information may be disclosed if ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503; [ 1983 , c . 459 , §7 (NEW) . ]

C-1. Within 48 hours of a death reportable by the commissioner to the Chief Medical Examiner pursuant to Title 22, section 3025, subsection 1, paragraph E, the commissioner shall provide information on that death to the chairs of the joint standing committee of the Legislature having jurisdiction over health and human services matters. Within 30 days of the reportable death, the commissioner shall provide the members of the committee with a copy of the death report. Information and reports provided pursuant to this paragraph must maintain the confidentiality of the identity of all persons mentioned or referred to in the information and reports. [ 1997 , c . 605 , §1 (NEW) . ]

D. Nothing in this subsection precludes disclosure, upon proper inquiry, of information relating to the physical condition or mental status of a client to his spouse or next of kin; [ 1983 , c . 459 , §7 (NEW) . ]

E. Nothing in this subsection precludes the disclosure of biographical or medical information concerning a client to commercial or governmental insurers, or to any other corporation, association or agency from which the department or a licensee of the department may receive reimbursement for the care and treatment, education, training or support of the client, if the recipient of the information uses it for no other purpose than to determine eligibility for reimbursement and, if eligibility exists, to make reimbursement; [ 1989 , c . 335 , §2 (AMD) . ]

F. Nothing in this subsection precludes the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any client in connection with any educational or training program established between a public hospital and any college, university,

hospital, psychiatric or counseling clinic or school of nursing, as long as, in the disclosure or use of the information as part of a course of instruction or training program, the client's identity remains undisclosed; [2011, c. 691, Pt. A, §39 (AMD).]

G. [2011, c. 691, Pt. A, §40 (RP).]

H. The names and dates of death of individuals who died while patients at the Augusta Mental Health Institute, the Bangor Mental Health Institute, the Dorothea Dix Psychiatric Center or the Riverview Psychiatric Center may be made available to the public in accordance with rules adopted by the department. The rules must require the department to notify the public regarding the release of the information and to maintain the confidentiality of information concerning any deceased individual whose surviving relatives notify the department that they object to public disclosure. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and [2011, c. 347, §10 (AMD).]

I. Nothing in this subsection precludes the disclosure of any information, except psychotherapy notes as defined in 45 Code of Federal Regulations, Section 164.501(2010), concerning a client to a state-designated statewide health information exchange that provides and maintains an individual protection mechanism by which a client may choose to opt in to allow the state-designated statewide health information exchange to disclose that client's health care information covered under this section to a health care practitioner or health care facility for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to a client at all times.

A state-designated statewide health information exchange may disclose a client's health care information covered under this section even if the client has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when, in a health care provider's judgment, disclosure is necessary to:

- (1) Avert a serious threat to the health or safety of others, if the conditions, as applicable, described in 45 Code of Federal Regulations, Section 164.512(j)(2010) are met; or
- (2) Prevent or respond to imminent and serious harm to the client and disclosure is to a provider for diagnosis or treatment. [2011, c. 347, §11 (NEW).]

[ 2013, c. 132, §1 (AMD); 2013, c. 434, §§7, 8 (AMD) .]

**2. Statistical compilations and research.** Confidentiality of records used for statistical compilations or research is governed as follows.

A. Persons engaged in statistical compilation or research may have access to treatment records of clients when needed for research, if:

- (1) The access is approved by the chief administrative officer of the mental health facility or his designee;
- (2) The research plan is first submitted to and approved by the chief administrative officer of the mental health facility, or his designee, where the person engaged in research or statistical compilation is to have access to communications and records; and
- (3) The records are not removed from the mental health facility which prepared them, except that data which do not identify clients or coded data may be removed from a mental health facility if the key to the code remains on the premises of the facility. [1983, c. 459, §7 (NEW).]

B. The chief administrative officer of the mental health facility and the person doing the research shall preserve the anonymity of the client and may not disseminate data which refer to the client by name, number or combination of characteristics which together could lead to his identification. [1983, c. 459, §7 (NEW).]

[1983, c. 459, §7 (NEW).]

**3. Use by the commissioner.** Confidentiality of information and records used by the commissioner for administration, planning or research is governed as follows.

A. A facility or a provider that receives funds from the department to provide services for persons eligible for such services under this Title shall send information and records to the commissioner, if requested by the commissioner pursuant to the department's obligation to maintain the overall responsibility for the care and treatment of persons receiving mental health services funded in full or in part by the State. [2011, c. 542, Pt. A, §61 (RPR).]

B. The commissioner may collect and use the information and records for administration, planning or research, under the following conditions.

(1) The use of the information is subject to subsection 1, paragraph C.

(2) Data identifying particular clients by means other than case number or code shall be removed from all records and reports of information before issuance from the mental health facility which prepared the records and reports.

(3) A code shall be the exclusive means of identifying clients and shall be available to the commissioner and only the commissioner.

(4) The key to the code shall remain in the possession of the issuing facility and shall be available to the commissioner and only the commissioner.

(5) Members of the department may not release or disseminate to any other person, agency or department of government any information which refers to a client by name, numbers, address, birth date or other characteristics or combination of characteristics which could lead to the client's identification, except as otherwise required by law. [1983, c. 459, §7 (NEW).]

[2011, c. 542, Pt. A, §61 (AMD).]

#### **4. Prohibited acts.**

[2007, c. 310, §1 (RP).]

**4-A. Violation.** Disclosure of client information in violation of this section is an offense under the licensing standards of the mental health professional committing the violation and must be promptly reported to the licensing board with jurisdiction for review, hearing and disciplinary action.

[2007, c. 310, §2 (NEW).]

#### **5. Permitted disclosure.**

[2007, c. 310, §3 (RP).]

**5-A. Disclosure to family, caretakers.** Under the following circumstances, a licensed mental health professional providing care to an adult client may disclose to a family member, to another relative, to a close personal friend or caretaker of the client or to anyone identified by the client, the client's health information that is directly relevant to the person's involvement with the client's care.

A. If a client with capacity to make health care decisions is either present or available prior to disclosure, the professional may disclose the information:

- (1) When the client gives oral or written consent;
- (2) When the client does not object in circumstances in which the client has the opportunity to object; or
- (3) When the professional may reasonably infer from the circumstances that the client does not object. [2007, c. 310, §4 (NEW).]

B. The professional may disclose the information if in the professional's judgment it is in the client's best interests to make the disclosure and the professional determines either that the client lacks the capacity to make health care decisions or an emergency precludes the client from participating in the disclosure. [2007, c. 310, §4 (NEW).]

[2007, c. 310, §4 (NEW).]

#### **6. Duty to provide information.**

[2007, c. 310, §5 (RP).]

**6-A. Disclosure of danger.** A licensed mental health professional shall disclose protected health information that the professional believes is necessary to avert a serious and imminent threat to health or safety when the disclosure is made in good faith to any person, including a target of the threat, who is reasonably able to prevent or minimize the threat.

[2009, c. 451, §7 (AMD).]

**7. Disclosure to law enforcement.** A licensed mental health professional shall disclose protected health information when the disclosure is made in good faith for a law enforcement purpose to a law enforcement officer if the conditions, as applicable, are met as described in 45 Code of Federal Regulations, Section 164.512(f) (2008).

[2009, c. 451, §8 (NEW).]

**8. Disclosure of knowledge of firearms.** A licensed mental health professional shall notify law enforcement when the notification is made in good faith that the licensed mental health professional has reason to believe that a person committed to a state mental health institute has access to firearms.

[2009, c. 451, §9 (NEW).]

**9. Disclosure for care management or coordination of care.** Notwithstanding any provision of this section to the contrary, a health care practitioner may disclose without authorization health information for the purposes of care management or coordination of care pertaining to a client as provided in this subsection.

A. Disclosure is permitted to a health care practitioner or health care facility as defined in Title 22, section 1711-C, subsection 1. [2013, c. 326, §2 (NEW).]

B. Disclosure is permitted to a payor or person engaged in payment for health care for the purpose of care management or coordination of care. [2013, c. 326, §2 (NEW).]

C. Disclosure of psychotherapy notes is governed by 45 Code of Federal Regulations, Section 164.508(a)(2). [2013, c. 326, §2 (NEW).]

D. A person who has made a disclosure under this subsection shall make a reasonable effort to notify the individual or the authorized representative of the individual of the disclosure. [2013, c. 326, §2 (NEW).]

[2013, c. 326, §2 (NEW).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §4 (AMD). 1983, c. 626, (AMD). 1985, c. 495, §23 (AMD). 1985, c. 582, (AMD). 1989, c. 7, §N3 (AMD). 1989, c. 190, (AMD). 1989, c. 335, §§2,3 (AMD). 1991, c. 250, (AMD). 1993, c. 593, §1 (AMD). 1995, c. 497, §5 (AMD). 1995, c. 560, §K19 (AMD). 1995, c. 691, §4 (AMD). 1997, c. 422, §2 (AMD). 1997, c. 605, §1 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 563, §§1-3 (AMD). RR 2005, c. 2, §22 (COR). 2005, c. 397, §§A47,48 (AMD). 2005, c. 683, §A57 (AMD). 2007, c. 286, §2 (AMD). 2007, c. 310, §§1-6 (AMD). 2007, c. 466, Pt. A, §56 (AMD). 2007, c. 609, §1 (AMD). 2007, c. 670, §17 (AMD). 2009, c. 415, Pt. A, §20 (AMD). 2009, c. 451, §§7-9 (AMD). 2011, c. 347, §§9-11 (AMD). 2011, c. 420, Pt. C, §§6, 7 (AMD). 2011, c. 542, Pt. A, §61 (AMD). 2011, c. 691, Pt. A, §§39, 40 (AMD). 2013, c. 132, §1 (AMD). 2013, c. 326, §2 (AMD). 2013, c. 434, §§7, 8 (AMD).

## §1208. AGREEMENTS WITH COMMUNITY AGENCIES

**1. Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Agreement" means a legally binding document between 2 parties, including documents commonly referred to as accepted application, proposal, prospectus, contract, grant, joint or cooperative agreement, purchase of service or state aid. [1983, c. 459, §7 (NEW).]

B. "Community agency" means a person, a public or private nonprofit organization or a firm, partnership or business corporation operated for profit, which operates a human service program at the community level. [1983, c. 459, §7 (NEW).]

C. "Funds" means any and all general funds, dedicated funds, fees, special revenue funds, 3rd party reimbursements, vendor payments or other funds available for expenditure by the department in support of the provision of a human service. [1983, c. 459, §7 (NEW).]

D. "Human service" means any alcoholism, children's community action, corrections, criminal justice, developmental disability, donated food, education, elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal, medical care, mental health, child and adult developmental, poverty, public assistance, rehabilitation, social, substance abuse, transportation, welfare or youth service operated by a community agency under an agreement financially supporting the service, wholly or in part, by funds authorized for expenditure by the department. [2011, c. 542, Pt. A, §62 (AMD).]

E. "Nonprofit organization" means any agency, institution or organization which is, or is owned and operated by, one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and which has a territory of operations that may extend to a neighborhood, community, region or the State. [1983, c. 459, §7 (NEW).]

F. "Public" means municipal, county and other governmental bodies which are political subdivisions within the State. [1983, c. 459, §7 (NEW).]

G. "State agency client" has the same meaning as in Title 20-A, section 1, subsection 34-A. [1985, c. 789, §§7, 9 (NEW).]

H. "Service provider" means a community agency providing services for children with mental health needs, intellectual disabilities or autism. [2011, c. 542, Pt. A, §63 (AMD).]

[ 2011, c. 542, Pt. A, §§62, 63 (AMD). ]

**2. Commissioner's powers.** The commissioner may disburse funds to a community agency for the purpose of financially supporting a human service, only if the disbursement is covered by a written agreement between the department and the agency, specifying at least the following:

- A. The human service to be provided by the community agency; [1983, c. 459, §7 (NEW).]
- B. The method of payment by the department to the community agency; and [1983, c. 459, §7 (NEW).]
- C. The criteria for monitoring and evaluating the performance of the community agency in the provision of the human service. [1983, c. 459, §7 (NEW).]

[ 1983, c. 459, §7 (NEW) .]

**3. Commissioner's duties.** The commissioner's duties are as follows.

- A. The commissioner shall promulgate rules consistent with and necessary for the effective administration of this section. [1983, c. 459, §7 (NEW).]
- B. When making agreements with community agencies for the provision of a human service, the commissioner shall use agreement forms and shall develop uniform procedures. [1983, c. 459, §7 (NEW).]
- C. When disbursing funds pursuant to an agreement, the commissioner shall require uniform accounts payable forms or uniform supporting documentation and information. [1983, c. 459, §7 (NEW).]
- D. When accounting for funds disbursed under an agreement, the commissioner shall use uniform accounting principles, policies and procedures. [1983, c. 459, §7 (NEW).]

[ 1983, c. 459, §7 (NEW) .]

**4. Payment for state agency clients.** The commissioner shall authorize payment of approved mental health treatment costs for state agency clients who are placed for educational purposes in an in-state residential treatment center, as identified in Title 20-A, section 1, subsection 24-A, paragraph D, subparagraph (3), to the extent of the amount of funds appropriated by the Legislature for this purpose; and may authorize payment of mental health treatment costs for similar placements in out-of-state residential placements on a case-by-case basis, within the limits of available funds. The commissioner shall further authorize payment of approved board and care and mental health treatment costs for state agency clients who are placed for other than educational purposes in any residential placement, as defined in Title 20-A, section 1, subsection 24-A, to the extent of the funds appropriated by the Legislature for this purpose. Payments that the commissioner is required to authorize under this section may not exceed the funds appropriated by the Legislature for the purposes referred to in this subsection. Payment from these funds must be made only when other appropriate state or federal funds to which the department has access have been exhausted.

[ 1995, c. 560, Pt. K, §20 (AMD) .]

**5. Annual report.** The Department of Health and Human Services shall prepare an annual report on all services contracted with community providers. The department shall deliver its report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs by January 31st of each year. The report shall include:

- A. A listing, by community agency, of all funds received from the State and a summary of the purposes for which those funds were expended; [1989, c. 167, §2 (NEW).]
- B. A summary of the most recent year's allocations of all funds by bureau, division or office, service area, region and, if available, county; [1993, c. 410, Pt. CCC, §12 (AMD).]
- C. An evaluation of additional funding needed to equalize funding among all regions by individual service areas, presented in prioritized order; [1989, c. 167, §2 (NEW).]

D. The department's assessment, by individual service area, of the outstanding service needs of the State. The assessment shall identify the funding source projected by the department to be available for the expansion of service, presented in prioritized order; and [1989, c. 167, §2 (NEW).]

E. Recommendations for changes in funding resulting from the department's planning and evaluation system presented in the following order of priority: greatest service need within existing funding scheme; equalization of regional funding with each service area; and new or outstanding needs. [1989, c. 167, §2 (NEW).]

[ 1993, c. 410, Pt. CCC, §12 (AMD); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

## 6. Rules.

[ 2007, c. 539, Pt. N, §64 (RP) .]

**7. Community agency staff retention.** The commissioner shall, through contracts and service agreements with community agencies, provide funding to retain qualified direct-care workers employed by community services agencies providing services for children and adults with intellectual disabilities or autism.

[ 2011, c. 542, Pt. A, §64 (AMD) .]

**8. Fees.** By July 1, 2004, the department shall adopt rules to require that contracts and service agreements with service providers require service providers to charge fees for certain services for children and families funded through grant funds from the department. Respite, outpatient, case management and home-based family services are subject to fees under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The following provisions apply to the rules and to the imposition of fees under the rules.

A. A fee scale must be established by the department on a sliding scale on the basis of household income, determined after consultation with the Department of Human Services, Bureau of Family Independence with reference to the federal nonfarm income official poverty line, and take into account the number of children with special needs within a household who are receiving services from the department and whether the family pays very high health care expenses. [2003, c. 673, Pt. SSS, §2 (NEW).]

B. The fee scale under paragraph A must be developed after consultation with service providers, consumers and advocates for service providers and consumers. As appropriate to the child, family and service, the fee scale must apply to all service providers and supersedes previous service provider fee schedules. [2003, c. 673, Pt. SSS, §2 (NEW).]

C. The fee scale under paragraph A may not require fees from families below 250% of the federal nonfarm income official poverty line and must require families above 450% of the federal nonfarm income official poverty line to pay 100% of the cost of services provided by service providers. The fee scale must include fees of 25%, 50%, 75% and 100% of the cost of services. [2003, c. 673, Pt. SSS, §2 (NEW).]

D. Service providers must be allowed to require payment of fees at the time that services are provided, to suspend services for nonpayment of fees and to retain all fees collected. Service providers must be required to provide an accounting to the department of fees charged and administrative expenses incurred in billing and collecting fees and of fees retained. [2003, c. 673, Pt. SSS, §2 (NEW).]

[ 2003, c. 673, Pt. SSS, §2 (NEW) .]

## SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 789, §§7-9 (AMD). 1987, c. 349, §H19 (AMD). 1989, c. 41, (AMD). 1989, c. 167, §2 (AMD). 1989, c. 432, (AMD). 1993, c. 410, §CCC12 (AMD). 1995, c. 560, §§K20,82 (AMD). 1995, c. 560, §K83 (AFF). 1999, c. 401, §SS1 (AMD). 1999, c. 401, §SS4 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 673, §§SSS1,2 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 539, Pt. N, §64 (AMD). 2011, c. 542, Pt. A, §§62-64 (AMD).

## §1208-A. PERFORMANCE-BASED CONTRACTS

In addition to other applicable requirements and unless precluded by other restrictions on the use of funds, the commissioner shall manage all funds available for the provision of human services in accordance with the provisions of this section. [1993, c. 737, §3 (NEW).]

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agreement" means a legally binding written document between 2 or more parties, including such documents as are commonly referred to as accepted application, proposal, prospectus, contract, grant, joint or cooperative agreement, purchase of service or state aid. [1993, c. 737, §3 (NEW).]

B. "Performance-based contract" means an agreement for the purchase of direct client services employing a client-centered, outcome-oriented process that is based on measurable performance indicators and desired outcomes and includes the regular assessment of the quality of services provided. [1993, c. 737, §3 (NEW).]

[ 1993, c. 737, §3 (NEW) .]

**2. Performance-based contract.** The commissioner shall ensure that any agreement with the board of the regional authority for the former Region V established pursuant to Public Law 1991, chapter 781, Part C entered into on or after July 1, 1994 is a performance-based contract. The commissioner shall ensure that all agreements to purchase human services entered into on or after July 1, 1997 are performance-based contracts.

[ 1995, c. 560, Pt. K, §21 (AMD) .]

**3. Rules.** The commissioner shall adopt rules to implement this section, including, but not limited to, the establishment of program goals, outcome measures, an information management system to collect and manage contract data, a system of ongoing assessment of program effectiveness and hold-harmless guidelines for provider agencies during the first contract period or 12 months, whichever is greater.

[ 1993, c. 737, §3 (NEW) .]

**4. Procedures.** The following procedures apply whenever the commissioner commences a request-for-proposal procedure.

A. The commissioner shall hold at least one informational meeting at least 30 days before the due date for submission of the notice of intent to bid. Any informational meeting must be advertised in newspapers of general circulation stating the location, date, time and purpose of the meeting. At the meeting the commissioner shall provide detailed information to any interested party about the contract to be bid or rebid, provide notice of anticipated major changes from any previous contract and respond to questions. [1995, c. 560, Pt. K, §81 (AFF); 1995, c. 691, §5 (AMD).]

B. The commissioner shall require any interested party to submit a notice of intent to bid at least 30 days before the date bids will be accepted as a precondition to submitting a formal bid. The notice of intent must contain minimal requirements that demonstrate a prospective bidder's competence and ability to comply with the requirements of the contract. [1995, c. 560, Pt. K, §81 (AFF); 1995, c. 691, §5 (AMD).]



C. If only one community service provider submits a notice of intent to bid, the commissioner may enter into negotiations concerning a contract with that provider in accordance with the procedures established for performance-based contracts. [1995, c. 402, Pt. B, §3 (NEW).]

D. For purposes of this section, the commissioner retains the right to reject any bids submitted and any proposals made during negotiations pursuant to paragraph C. [1995, c. 402, Pt. B, §3 (NEW).]

[ 1995, c. 560, Pt. K, §81 (AFF); 1995, c. 691, §5 (AMD) .]

#### SECTION HISTORY

1993, c. 737, §3 (NEW). 1995, c. 402, §B3 (AMD). 1995, c. 560, §K21 (AMD). 1995, c. 560, §K81 (AFF). 1995, c. 691, §5 (AMD).

### **§1209. MENTAL HEALTH ADVISORY COUNCIL**

***(REPEALED)***

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 812, §261 (AMD). 1985, c. 712, §1 (AMD). 1987, c. 887, §4 (RP).

### **§1209-A. MENTAL HEALTH RIGHTS ADVISORY BOARD**

***(REPEALED)***

#### SECTION HISTORY

1985, c. 645, §3 (NEW). 1989, c. 503, §B161 (AMD). 1999, c. 668, §122 (RP).

### **§1209-B. ADVISORY BOARD ON RIGHTS OF CHILDREN IN NEED OF SERVICES**

***(REPEALED)***

#### SECTION HISTORY

1989, c. 688, §2 (NEW). 1993, c. 360, §G2 (RP).

### **§1210. MAINE ADVISORY COMMITTEE ON MENTAL RETARDATION**

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 812, §§262,263 (AMD). 1989, c. 73, §2 (AMD). 1993, c. 410, §CCC13 (AMD). 2007, c. 356, §31 (AFF). 2007, c. 356, §8 (RP).

### **§1211. MAINE DEVELOPMENTAL DISABILITIES COUNCIL**

***(REPEALED)***

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 812, §264 (AMD). 1989, c. 503, §B162 (AMD). 1993, c. 600, §A279 (AMD). 2001, c. 25, §1 (AMD). 2003, c. 417, §4 (AFF). 2003, c. 417, §2 (RP).

## §1212. STATE FORENSIC SERVICE

**1. Establishment and membership.** The Commissioner of Health and Human Services shall establish a State Forensic Service and appoint its members. Members must be psychiatrists and licensed clinical psychologists experienced in forensic service and may not be directly involved in the treatment of persons committed to the department under Title 15, chapter 5. These psychiatrists and psychologists may be employed by the department directly or as independent contractors.

[ 1995, c. 2, §85 (COR); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

**2. Duties.** The State Forensic Service shall have the following duties:

A. To perform examinations of the mental condition of a defendant pursuant to Title 15, section 101-D and to do the evaluations or examinations on behalf of any court of record, pursuant to agreement between the commissioner and the jurisdiction requesting that the evaluation be performed; [ 2009, c. 268, §11 (AMD) .]

B. To perform examinations of the mental condition of persons committed to the custody of the commissioner under Title 15, section 103, for the purposes specified in Title 15, section 104-A; [1995, c. 219, §1 (AMD) .]

C. To perform examinations of the mental condition of persons pursuant to Title 22, chapter 250; and [1995, c. 219, §2 (AMD) .]

D. To perform evaluations on behalf of any court of record. The State Forensic Service may contract with psychologists, psychiatrists and licensed clinical social workers to perform evaluations. The clinicians under contract are entitled to quasi-judicial immunity for all acts performed within the scope of their evaluation duties and in accordance with protocols for evaluations established by the State Forensic Service. [1995, c. 219, §3 (NEW) .]

[ 2009, c. 268, §11 (AMD) .]

**3. Professional education program.** The State Forensic Service may establish and maintain a professional education program designed to assist licensed psychologists and psychiatrists in developing expertise in the forensic aspects of each profession, with emphasis on the assessment of competency, criminal responsibility and abnormal condition of mind under the laws of the State.

[ 1989, c. 621, §9 (NEW) .]

### SECTION HISTORY

1985, c. 796, §7 (NEW). 1989, c. 487, §§16,17 (AMD). 1989, c. 621, §9 (AMD). RR 1995, c. 2, §85 (COR). 1995, c. 219, §§1-3 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §B7 (REV). 2009, c. 268, §11 (AMD).

## §1213. RELEASE REVIEW ADVISORY COMMITTEE

*(REPEALED)*

### SECTION HISTORY

1985, c. 796, §7 (NEW). 1993, c. 48, §2 (RP).

## §1214. INTERDEPARTMENTAL COUNCIL

*(REPEALED)*

### SECTION HISTORY

1987, c. 181, §§1,2 (NEW). 1987, c. 831, §2 (NEW). 1989, c. 502, §B44 (RPR). 1989, c. 700, §A163 (AMD). 1989, c. 729, (AMD). 1991, c. 780, §DDD21 (AFF). 1993, c. 349, §68 (AMD). 1993, c. 410, §LL13 (AMD). 1993, c. 738, §B5 (RP).

## §1215. INTERIM ASSISTANCE PAYMENTS

The department shall establish and maintain a nonlapsing revolving fund to provide interim assistance payments to Supplemental Security Income recipients: [1989, c. 502, Pt. B, §45 (NEW).]

**1. Benefits for hospitalization.** Whose benefits have been terminated while they were hospitalized and who are reapplying for benefits because of their release from the hospital; or

[ 1989, c. 502, Pt. B, §45 (NEW) .]

**2. Benefits when no longer able to work.** Whose benefits have been terminated because they returned to work and who are reapplying for benefits because they have suffered a relapse and are no longer able to work.

These benefits shall be provided until their Supplemental Security Income application has been acted on. The fund shall be reimbursed, pursuant to Title 22, section 3174-E, for interim assistance payments made under this section.

[ 1989, c. 502, Pt. B, §45 (NEW) .]

### SECTION HISTORY

1989, c. 502, §B45 (NEW).

## §1216. CONSUMER ADVISORY BOARD

*(REPEALED)*

### SECTION HISTORY

1989, c. 349, §2 (NEW). 1995, c. 127, §1 (AMD). 1995, c. 560, §§K22,23 (AMD). 2007, c. 356, §31 (AMD). 2007, c. 356, §6 (AMD). 2007, c. 695, Pt. D, §1 (AMD). MRSA T. 34-B, §1216, sub-§4 (RP).

## §1217. APPLICATION OF CONSENT DECREE

It is the intent of the Legislature that the principles of the consent decree issued on August 2, 1990 by the Superior Court, Kennebec County, in Civil Action Docket No. 89-88 as they relate to the development of a comprehensive mental health system apply to all persons with severe and prolonged mental illness. The individualized support plan process as contained in the decree in paragraphs 49 through 74, to the extent possible and within available resources, must be applicable to current and future patients of the former Bangor Mental Health Institute and the Dorothea Dix Psychiatric Center. In addition, patient assessments must be provided to Bangor Mental Health Institute and Dorothea Dix Psychiatric Center patients beginning July 1, 1991 and must be completed quarterly until individualized support plan implementation is developed. [2005, c. 683, Pt. A, §58 (AMD).]

### SECTION HISTORY

1991, c. 9, §E18 (NEW). 2005, c. 683, §A58 (AMD).

## §1218. SERVICES TO PERSONS WHO ARE DEAF OR HARD-OF-HEARING

**1. Mental health services.** The department shall provide accommodations and services for persons who are deaf or hard-of-hearing in order to provide access to mental health programs funded or licensed by the department. These accommodations must include, but are not limited to, the following:

- A. Appropriate mental health assessments for clients who are deaf or hard-of-hearing; [1993, c. 519, §1 (NEW).]
- B. Provision of interpreter services for treatment; [1993, c. 519, §1 (NEW).]
- C. Educational and training for mental health staff providing treatment to persons who are deaf or hard-of-hearing; [1993, c. 519, §1 (NEW).]
- D. Placement of telecommunication devices for persons who are deaf or hard-of-hearing in comprehensive community mental health facilities; [1993, c. 519, §1 (NEW).]
- E. Support and training for families with members who are deaf or hard-of-hearing who experience mental health problems; and [1993, c. 519, §1 (NEW).]
- F. Establishment of a therapeutic residence program for persons who are deaf or hard-of-hearing and in need of residential mental health treatment. The therapeutic residence program must be operated in conjunction with existing rehabilitation, education, mental health treatment and housing resources. The therapeutic residence program must be staffed by individuals trained in mental health treatment and proficient in communication for the deaf. [1993, c. 519, §1 (NEW).]

[1995, c. 560, Pt. K, §24 (AMD).]

**2. Services for persons with intellectual disabilities or autism.** The department shall provide accommodations and services ensuring access for persons who are deaf or hard-of-hearing to programs funded or licensed by the department providing services for persons who have intellectual disabilities or autism. These accommodations and services must include, but are not limited to, the following.

- A. The department shall ensure the provision of appropriate assessments for clients who are deaf or hard-of-hearing. Assessments must be performed by a person who is proficient in American Sign Language and must include an assessment of intellectual disability or autism and an assessment of communication skills, including the capacity to communicate using American Sign Language. The department shall survey the client population to determine which clients are deaf or hard-of-hearing. [2011, c. 542, Pt. A, §65 (AMD).]
- B. For purposes of treatment, the department shall ensure the provision of interpreter services by a person proficient in American Sign Language. [1995, c. 560, Pt. K, §24 (AMD).]
- C. The department shall ensure that staff providing direct services to persons who are deaf or hard-of-hearing have education and training in American Sign Language and deaf culture. [2011, c. 542, Pt. A, §65 (AMD).]
- D. The department shall provide for the placement of telecommunication devices for persons who are deaf or hard-of-hearing in any location that provides residential, employment or other community-based services for persons eligible under this Title. [2011, c. 542, Pt. A, §65 (AMD).]
- E. The department shall ensure the provision of support and training for families with members who have an intellectual disability or autism who are deaf or hard-of-hearing. [2011, c. 542, Pt. A, §65 (AMD).]
- F. The department shall establish therapeutic residence options for persons with intellectual disabilities or autism who are deaf or hard-of-hearing and in need of a residence. The therapeutic residences must be operated in conjunction with existing rehabilitation, education, housing and other community-based service resources. The therapeutic residences must be staffed by individuals trained in providing

services for persons with intellectual disabilities and autism and proficient in American Sign Language. Therapeutic residence options must be flexible and allow for individual choice. [ 2011, c. 542, Pt. A, §65 (AMD) . ]

G. The department shall designate in each regional office one staff person who is responsible for the coordination of deaf services in that office. The department shall provide ongoing training to regional office staff with the goal of having at least one person in each regional office who is proficient in American Sign Language. [1995, c. 560, Pt. K, §24 (AMD) . ]

[ 2011, c. 542, Pt. A, §65 (AMD) . ]

**3. School-aged children.** This section does not diminish or alter in any way the Department of Education's responsibility to provide free and appropriate education to students with disabilities.

[ 1993, c. 519, §1 (NEW) . ]

**4. Report.** The department shall prepare a biennial report that describes accommodations and services available under this section and identifies unmet service needs and a plan to address those needs. The commissioner shall include representatives from deaf communities, families and public and private service agencies in the preparation of the report. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over human resource matters and the Office of the Executive Director of the Legislative Council by January 15th of every even-numbered year.

[ 1993, c. 519, §1 (NEW) . ]

#### SECTION HISTORY

1993, c. 519, §1 (NEW). 1995, c. 560, §K24 (AMD). 2011, c. 542, Pt. A, §65 (AMD) .

## §1219. STATE STRATEGY FOR PREVENTING IMPRISONMENT OF PERSONS WITH SERIOUS MENTAL ILLNESS

**1. Development of state strategy.** The department shall develop a comprehensive state strategy for preventing the inappropriate incarceration of seriously mentally ill individuals and for diverting those individuals away from the criminal justice system. This strategy must be developed with the active participation of other agencies and providers responsible for serving persons with serious mental illness, including representatives of community mental health centers, area shelters, other community providers, consumers of services and their families, providers of inpatient mental health services, advocates for consumers of mental health services, sheriffs' departments and the Department of Public Safety.

[ 2011, c. 657, Pt. AA, §85 (AMD) . ]

**2. Components of strategy.** The state strategy developed under subsection 1 must include, but is not limited to:

A. Identification of existing programs or creation of jail diversion and community mental health programs to serve persons with serious mental illness who have been charged with minor crimes that are a manifestation of their illness, including identification of financing mechanisms for the programs and the services provided; [1995, c. 431, §2 (NEW) . ]

B. Systems for the evaluation of serious mental illness, within 24 hours of contact with the criminal justice system, of persons charged with minor crimes and timely referral of those persons identified as seriously mentally ill to appropriate community mental health programs; [1995, c. 431, §2 (NEW) . ]

C. Specific mechanisms for enabling police and correctional officers to communicate and consult on a timely basis with appropriate mental health personnel about specific cases; [1995, c. 431, §2 (NEW).]

D. Plans for conducting training, in conjunction with the Maine Criminal Justice Academy, of law enforcement and correctional personnel about serious mental illness and effective methods for evaluating, treating and managing persons with serious mental illness; [1995, c. 431, §2 (NEW).]

E. Plans for training mental health professionals who participate in state-funded, educational training programs to work with persons with serious mental illness in correctional facilities, including, but not limited to, on-site field experience in correctional facilities or jail diversion programs; and [1995, c. 431, §2 (NEW).]

F. Plans for providing comprehensive treatment, services and support to persons with serious mental illness following their release from correctional facilities. [1995, c. 431, §2 (NEW).]

[1995, c. 431, §2 (NEW).]

#### SECTION HISTORY

1995, c. 431, §2 (NEW). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. AA, §85 (AMD).

## §1220. MENTAL HEALTH SERVICES TO PERSONS ON PROBATION

The department shall designate at least one individual within each of the 7 areas described in section 3608, subsection 1-A to act as liaison to the District Courts and Superior Courts of the State and to the Department of Corrections in its administration of probation and parole services. [2013, c. 133, §34 (AMD).]

### 1. Duties of liaison. A liaison has the following duties:

A. To provide reports in a timely fashion on behalf of the department in response to any requests made by a court pursuant to Title 17-A, section 1204, subsection 4 and to undertake or cause to be undertaken such inquiries or evaluations as are necessary to complete the reports; [1997, c. 1, §27 (COR).]

B. To obtain evaluations as may be required by this section from a person who is one of the following:

(1) A licensed psychiatrist;

(2) A licensed psychologist;

(3) A nurse certified by a national association of nurses as a psychiatric and mental health nurse or as a clinical specialist in adult psychiatric and mental health nursing;

(4) A social worker licensed as a licensed clinical social worker or a licensed master social worker; or

(5) A licensed clinical professional counselor; and [1997, c. 422, §3 (NEW).]

C. To receive any notice of imposition of a condition of probation given pursuant to Title 17-A, section 1204, subsection 4 and to assess or to obtain an assessment of the appropriateness and availability of the mental health services necessary for an individual to meet the conditions of probation imposed. [1997, c. 422, §3 (NEW).]

[1997, c. 1, §27 (COR).]

**2. Mental health services inappropriate or unavailable.** If, after completion of a report as required by subsection 1, paragraph A, the evaluator or the liaison is of the opinion, based upon professional judgment, that the mental health services necessary for an individual to meet the conditions of probation

are inappropriate given the individual's clinical condition or that the mental health services are unavailable, then the liaison shall notify the court, the probation officer, the individual on probation and the individual's attorney, if known, that the mental health services are inappropriate or unavailable.

[ 2013, c. 2, §43 (COR) .]

**3. Mental health services appropriate and available.** If, after completion of a report as required by subsection 1, paragraph A, the evaluator or the liaison is of the opinion, based upon professional judgment, that the mental health services necessary for an individual to meet the conditions of probation are appropriate given the individual's clinical condition and the evaluator or the liaison knows that the services are available, then the liaison shall assist the individual in obtaining the appropriate mental health services.

[ 1997, c. 422, §3 (NEW) .]

#### SECTION HISTORY

RR 1997, c. 1, §27 (COR). 1997, c. 422, §3 (NEW). 2007, c. 286, §3 (AMD). RR 2013, c. 2, §43 (COR). 2013, c. 133, §34 (AMD).

## §1221. PLANS FOR THE HOMELESS

The regional housing coordinator for each region shall convene a working group annually to develop a plan that states how mental health or substance abuse services needed by individuals using homeless shelters will be provided. Each working group shall submit a plan annually to the community service network established pursuant to section 3608. The community service network shall review the plan and submit it, with any suggested changes, to the Statewide Homeless Council, established pursuant to Title 30-A, section 5046. [2007, c. 286, §4 (AMD).]

**1. Working group.** The working group in each region consists of the following members:

A. Representatives of homeless shelter operators that receive shelter operating subsidy funds from the Housing Opportunities for Maine Fund designated by the Maine State Housing Authority; [1997, c. 643, Pt. XX, §4 (NEW).]

B. Representatives of mental health provider agencies designated by the department; [1997, c. 643, Pt. XX, §4 (NEW).]

C. Representatives of providers of substance abuse services designated by the department; [1997, c. 643, Pt. XX, §4 (NEW).]

D. The regional housing coordinators; and [1997, c. 643, Pt. XX, §4 (NEW).]

E. Representatives of the boards of directors of the entities listed in paragraphs A, B and C designated by the boards of directors. [1997, c. 643, Pt. XX, §4 (NEW).]

[ 1997, c. 643, Pt. XX, §4 (NEW) .]

**2. Plan contents.** Each plan must be designed to meet local needs and must include, but is not limited to, the following components:

A. An overview of local service area needs; [1997, c. 643, Pt. XX, §4 (NEW).]

B. A review of the factors that lead to homelessness, the barriers to permanent housing and the clinical needs of individuals using homeless shelters based upon discussions with those persons; and [1997, c. 643, Pt. XX, §4 (NEW).]

C. Procedures for referrals, treatment planning, information sharing, clinical services, training for shelter and mental health services providers and determining consumer satisfaction with shelter services and mental health services. [1997, c. 643, Pt. XX, §4 (NEW).]

[ 1997, c. 643, Pt. XX, §4 (NEW) .]

#### SECTION HISTORY

1997, c. 643, §XX4 (NEW). 2005, c. 380, §B14 (AMD). 2007, c. 286, §4 (AMD).

## §1222. COUNTY JAIL MENTAL ILLNESS TREATMENT PILOT PROGRAMS

The department, together with the Department of Corrections, shall convene a stakeholder group, which must include at a minimum representatives of mental health providers, county jail facilities, advocacy groups, persons with mental illness who are or have been incarcerated in jail and families of persons with mental illness who are or have been incarcerated in jail. The stakeholder group shall design a pilot program to provide increased mental health services to county jail populations. The pilot program must be based on best practices approaches that are supported by research and include collaboration agreements among county jails, community mental health providers, the department and the Department of Corrections. The pilot program must also include mechanisms for evaluating program success. The pilot program must augment and not supplant any existing mental health or county jail efforts to meet the needs of persons with mental illness. [2001, c. 659, Pt. G, §1 (NEW).]

Once agreement on program design is reached by the stakeholder group and an agreement on program content, focus and function is signed by all stakeholders, the department, in cooperation with the Department of Corrections, shall act as the program and fiscal oversight agent and make available through one or more contracts funds for the pilot program. The department shall seek Medicaid or other available funds to support this effort wherever possible. [2001, c. 659, Pt. G, §1 (NEW).]

By January 30, 2003, the department and the Department of Corrections shall provide a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters on the success of the pilot program. [2001, c. 659, Pt. G, §1 (NEW).]

#### SECTION HISTORY

2001, c. 659, §G1 (NEW).

## §1223. MAINE DEVELOPMENTAL SERVICES OVERSIGHT AND ADVISORY BOARD

**1. Composition.** The Maine Developmental Services Oversight and Advisory Board, as established by Title 5, section 12004-J, subsection 15 and referred to in this section as “the board,” consists of 15 members appointed by the Governor from a list of nominees proposed by the board pursuant to procedures established in the rules of the board.

A. The board shall submit nominees to the Governor at least 90 days prior to the expected date of each vacancy. [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

B. In making nominations, the board shall endeavor to ensure adequate representation at all times from different service regions of the State and from interested stakeholder groups, including but not limited to:

- (1) The protection and advocacy agency designated pursuant to Title 5, section 19502;
- (2) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations;
- (3) A nonprofit organization that serves teens and young adults in the State with emotional and intellectual disabilities;



(4) A statewide coalition that works to support and facilitate the ability of local and statewide self-advocacy organizations to network with each other and with national organizations; and

(5) The Maine Developmental Disabilities Council. [ 2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF). ]

C. In making the nominations and appointments, the board and the Governor shall endeavor to ensure that at least 8 of the members of the board are persons with intellectual disabilities or autism or family members, guardians or allies of persons with intellectual disabilities or autism who receive services funded by the Department of Health and Human Services. Of these members, at least 4 must be persons with intellectual disabilities or autism, referred to in this section as "self-advocates." [ 2011, c. 542, Pt. A, §66 (AMD). ]

Members of the board must include stakeholders involved in services and supports for persons with intellectual disabilities or autism in the State and other individuals interested in issues affecting persons with intellectual disabilities or autism. Employees of the Department of Health and Human Services may not be appointed as members of the board.

[ 2011, c. 542, Pt. A, §66 (AMD) . ]

**2. Terms.** Members of the board serve 3-year terms. A member serves until a successor is appointed. A vacancy must be filled as soon as practicable by appointment for the unexpired term.

[ 2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF) . ]

**3. Chair.** The board shall elect a chair from among its members.

[ 2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF) . ]

**4. Compensation.** Members of the board are entitled to reimbursement of reasonable expenses incurred in order to serve on the board as provided in Title 5, section 12004-J, subsection 15. Members not otherwise compensated by their employers or other entities whom they represent are entitled to receive a per diem as established by rule or policy adopted by the board for their attendance at authorized meetings of the board.

[ 2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF) . ]

**5. Staff.** The board may hire an executive director and clerical support staff.

[ 2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF) . ]

**6. Budget.** The board shall provide to the commissioner a proposed budget in accordance with a schedule agreed to by the chair and the commissioner. The department shall include in its estimate of expenditure and appropriation requirements filed pursuant to Title 5, section 1665 sufficient funds, listed in a separate account as a separate line item, to enable the board to perform its duties.

[ 2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF) . ]

**7. Maine Tort Claims Act.** The board members and staff act as employees of the State, as defined in Title 14, section 8102, subsection 1, when engaged in official duties specified in this section or assigned by the board.

[ 2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF) . ]

**8. Oversight and advisory functions.** The board shall:

A. Provide independent oversight over programs and services for adults with intellectual disabilities or autism that are provided, authorized, funded or supported by the department or any other agency or department of State Government. The board shall focus on systemic concerns affecting the rights of persons with intellectual disabilities or autism, including but not limited to issues surrounding health and safety, inclusion, identification of needs and desires of persons eligible for services by the department, the timely meeting of the identified needs and effective and efficient delivery of services and supports; and [2011, c. 542, Pt. A, §66 (AMD).]

B. Provide advice and systemic recommendations to the commissioner, the Governor and the Legislature regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with intellectual disabilities or autism. [2011, c. 542, Pt. A, §66 (AMD).]

[ 2011, c. 542, Pt. A, §66 (AMD) .]

**9. Powers and duties of the board.** In order to carry out its oversight and advisory functions, the board has the following powers and duties.

A. The board shall hold at least one hearing or other forum each year that is open to the public in order to gather information about the availability, accessibility and quality of services available to persons with intellectual disabilities or autism and their families. [2011, c. 542, Pt. A, §67 (AMD).]

B. The board may accept funds from the Federal Government, the State, a political subdivision of the State, individuals, foundations and corporations and may expend those funds for purposes consistent with the board's functions, powers and duties. [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

C. The board shall establish priorities for its oversight and systems advocacy work. In establishing priorities, the board shall consider the results of its work in addressing the priorities established in previous years. [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

D. The board shall report at least annually to the Governor and the Legislature on its activities and recommendations regarding policies, priorities, budgets and legislation affecting the rights and interests of persons with intellectual disabilities or autism. The board's annual report must include the board's assessment of its operations and progress in addressing the priorities established pursuant to paragraph C. The board's annual report must be made public and widely disseminated in a manner designed to inform interested stakeholders. [2011, c. 542, Pt. A, §67 (AMD).]

E. The board may provide reports and recommendations to the commissioner on matters of systemic concern arising from the board's oversight role. The board may recommend that the department undertake the study of specific systemic issues as part of the department's annual quality assurance activities and strategies, and the board may collaborate and cooperate with the department in the conduct of any such studies, if feasible. The commissioner shall provide a written response no later than 30 days following receipt of the recommendations from the board. [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

F. The board may refer individual cases that require investigation or action to the department, the protection and advocacy agency designated pursuant to Title 5, section 19502 or other appropriate agency. [2011, c. 657, Pt. EE, §2 (AMD).]

[ 2011, c. 542, Pt. A, §67 (AMD); 2011, c. 657, Pt. EE, §2 (AMD) .]

**10. Access to information.** The board is entitled to access to information from the department necessary to carry out its functions. Except as provided in paragraphs D and E, information provided pursuant to this subsection may not contain personally identifying information about a person with intellectual disabilities or autism.

A. The department shall provide the board, on a schedule to be agreed upon between the board and the department, reports on case management, reportable events, adult protective and rights investigations, unmet needs, crisis services, quality assurance, quality improvement, budgets and other reports that

contain data about or report on the delivery of services to or for the benefit of persons with intellectual disabilities or autism, including reports developed by or on behalf of the department and reports prepared by others about the department. [2011, c. 542, Pt. A, §68 (AMD).]

B. The department, when requested by the board or pursuant to a written agreement with the board, shall release to the board information pertaining to alleged abuse, exploitation or neglect or an alleged dehumanizing practice or violation of rights of a person with intellectual disabilities or autism. [2013, c. 310, §1 (AMD).]

C. [2013, c. 310, §1 (RP).]

D. The board may examine confidential information in individual records with written permission of the person or that person's guardian. If the person or that person's guardian provides the board with written permission to examine confidential information, the board must maintain the confidentiality of the information as required by section 1207. [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

E. The board or the board's staff may receive and examine confidential information when otherwise authorized to do so by law, including but not limited to when serving on a committee established by the department for which access to such information is necessary to perform the function of the committee. [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

[ 2013, c. 310, §1 (AMD) .]

**11. Rulemaking.** The board shall adopt rules governing its operations, including rules establishing its bylaws. Rules adopted pursuant to this subsection must address:

A. Procedures for nominating persons to fill vacancies on the board; [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

B. Procedures for holding annual hearings or other alternative means of receiving input from citizens throughout the State pursuant to subsection 9; [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

C. Procedures for exercising its powers pursuant to subsection 10, paragraph D in a manner that is respectful of the rights, interests and opinions of persons whose records are at issue; [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

D. Procedures concerning the hiring of an executive director, including the method for selection and the role of the executive director and procedures concerning the supervision, compensation and evaluation of the executive director; and [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

E. The provision of per diem stipends for members not otherwise compensated by their employers or other entities whom they represent for their attendance at authorized meetings of the board. [2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2007, c. 356, §7 (NEW); 2007, c. 695, Pt. D, §3 (AFF) .]

#### SECTION HISTORY

2007, c. 356, §7 (NEW). 2007, c. 356, §31 (AFF). 2007, c. 695, Pt. D, §3 (AFF). 2011, c. 542, Pt. A, §§66-68 (AMD). 2011, c. 657, Pt. EE, §§2, 3 (AMD). 2013, c. 310, §1 (AMD).

## §1224. PROCESSING FEE

Beginning October 1, 2010, a facility or health care provider subject to the licensing provisions of section 1203-A shall pay a processing fee not to exceed \$10 to the department for the reissuance of a license when the licensee made changes that require the reissuance of a license. [ 2009, c. 590, §7 (NEW) . ]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [ 2009, c. 590, §7 (NEW) . ]

### *§1224. Criminal background checks*

*(As enacted by PL 2009, c. 621, §8 is REALLOCATED TO TITLE 34-B, SECTION 1225)*

#### SECTION HISTORY

RR 2009, c. 2, §94 (RAL). 2009, c. 590, §7 (NEW). 2009, c. 621, §8 (NEW) .

## §1225. CRIMINAL BACKGROUND CHECKS

*(REALLOCATED FROM TITLE 34-B, SECTION 1224)*

Beginning October 1, 2010, a facility or health care provider subject to the licensing provisions of section 1203-A shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The facility or health care provider shall pay for the criminal background check required by this section. [ 2009, c. 2, §94 (RAL) . ]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [ 2009, c. 2, §94 (RAL) . ]

#### SECTION HISTORY

RR 2009, c. 2, §94 (RAL) .

### Subchapter 2-A: FUNDS FOR THE DEVELOPMENTALLY DISABLED HEADING: PL 1987, C. 176 (NEW)

## §1231. SELF-SUFFICIENCY TRUST FUND

**1. Trust established.** There is created the Self-sufficiency Trust Fund. The State Treasurer, ex officio, is the custodian of the trust fund and the comptroller shall direct payments from the trust fund upon vouchers properly certified by the Commissioner of Health and Human Services. The treasurer shall credit interest on the trust fund to the trust fund and the commissioner shall allocate that interest pro rata to the respective accounts of the named beneficiaries of the trust fund.

A. For the purposes of this section, the term "self-sufficiency trust" means a trust created by a nonprofit corporation which is a 501-C-3 organization under the United States Internal Revenue Code of 1954 and which was organized under the Nonprofit Corporation Act, Title 13-B, for the purpose of providing for the care or treatment of one or more developmentally disabled persons or persons otherwise eligible for department services. [1987, c. 176, (NEW) . ]

[ 1995, c. 2, §86 (COR); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §7 (REV) . ]

**2. Rules.** The department shall adopt these rules and procedures under the Maine Administrative Procedure Act, Title 5, chapter 375, as may be necessary or useful for the administration of the trust fund.

[ 1987, c. 176, (NEW) .]

#### SECTION HISTORY

1987, c. 176, (NEW). RR 1995, c. 2, §86 (COR). 2001, c. 354, §3 (AMD).  
2003, c. 689, §B7 (REV).

## §1232. ADMINISTRATION OF FUND

**1. Naming beneficiaries.** The Department of Health and Human Services may accept money from a self-sufficiency trust for deposit in the trust fund pursuant to an agreement with the trust naming one or more beneficiaries who are developmentally disabled persons or persons otherwise eligible for department services residing in this State and specifying the care or treatment to be provided for them. The department shall maintain a separate account in the trust fund for each named beneficiary.

[ 1987, c. 176, (NEW); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

**2. Care and support of beneficiaries.** The money in these accounts shall be spent by the department, pursuant to its rules, only to provide care and treatment for the named beneficiaries in accordance with the terms of the agreement.

[ 1987, c. 176, (NEW) .]

**3. Return of money.** In the event that the director determines that the money in the account of a named beneficiary cannot be used for the care or treatment of the beneficiary in a manner consistent with the rules of the department and the agreement, or upon request of the self-sufficiency trust, the remaining money in that account, together with any accumulated interest on that account, shall be promptly returned to the self-sufficiency trust which deposited the money in the trust fund.

[ 1987, c. 176, (NEW) .]

**4. Other benefits not affected.** The receipt by a beneficiary of money from the trust fund, or of care or treatment provided with that money, shall not in any way reduce, impair or diminish the benefits to which the beneficiary is otherwise entitled by law.

[ 1987, c. 176, (NEW) .]

#### SECTION HISTORY

1987, c. 176, (NEW). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV).

## §1233. SPECIAL FUND IN THE STATE TREASURY

The fund for the developmentally disabled is created as a special fund in the State Treasury. The director may accept money from any source for deposit into the fund. The money in the fund shall be used by the department, subject to an allocation for the purpose of providing for the care and treatment of low-income developmentally disabled persons, or low-income persons otherwise eligible for department services, as defined by the department. [1987, c. 176, (NEW) .]

#### SECTION HISTORY

1987, c. 176, (NEW).

## Subchapter 2-B: DOROTHEA DIX AWARD HEADING: PL 2005, C. 236, §1 (NEW)

### §1301. DOROTHEA DIX AWARD

The commissioner shall establish the Dorothea Dix Award, which recognizes and honors outstanding achievement in improving the lives of people living with mental illness or mental disabilities. The award must be made on April 4th of each odd-numbered year at the Dorothea Dix Psychiatric Center. The Governor or the Governor's designee shall present the award. [ 2005, c. 236, §1 (NEW) . ]

**1. Eligibility.** A person who is a Maine resident or has direct long-standing ties with Maine is eligible to win the award.

[ 2005, c. 236, §1 (NEW) . ]

**2. Dorothea Dix Award Selection Committee; established.** The Dorothea Dix Award Selection Committee, known in this subchapter as "the committee," is established and consists of the following 4 members:

A. One member representing people with mental illness, chosen by the Governor; [ 2005, c. 236, §1 (NEW) . ]

B. One member representing advocates for the legal rights of people living with disabilities, chosen by the President of the Senate; [ 2005, c. 236, §1 (NEW) . ]

C. One member representing people with mental disabilities, chosen by the Speaker of the House of Representatives; and [ 2005, c. 236, §1 (NEW) . ]

D. One member representing children living with mental illness or mental disabilities, chosen by the Attorney General. [ 2005, c. 236, §1 (NEW) . ]

[ 2005, c. 236, §1 (NEW) . ]

**3. Selection procedure.** Any person may nominate a candidate for the award. The committee shall develop a review and selection procedure.

[ 2005, c. 236, §1 (NEW) . ]

#### SECTION HISTORY

2005, c. 236, §1 (NEW) .

## Subchapter 3: INSTITUTIONS GENERALLY

### Article 1: ADMINISTRATIVE PROVISIONS

### §1401. CHIEF ADMINISTRATIVE OFFICERS

*(REPEALED)*

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 410, §CCC14 (AMD). 1993, c. 667, §2 (AMD). 1995, c. 395, §G12 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 560, §§K25,26 (AMD). 2005, c. 236, §§3,4 (REV). 2007, c. 539, Pt. N, §65 (RP).

## §1402. COMMUNITY SERVICES

**1. Commissioner's duty.** In every state institution to which a person with mental illness or an intellectual disability may be committed, the commissioner shall organize and administer the duties set forth in subsection 2.

[ 2011, c. 542, Pt. A, §69 (AMD) .]

**2. Duties.** The department shall:

A. Supervise clients who have left the institution with a view to their safe care at home, suitable employment and self-support under good working and living conditions, and with a view to prevention of their relapse and return to public dependency; [1983, c. 459, §7 (NEW) .]

B. Provide for informing and advising any indigent person, that person's relatives or friends and the representatives of any charitable agency as to:

(1) The mental condition of the indigent person;

(2) The prevention and treatment of the condition;

(3) The available institutions or other means of caring for the person; and

(4) Any other matter relative to the welfare of the person; and [2009, c. 299, Pt. A, §6 (AMD) .]

C. Acquire and disseminate knowledge of mental disease, intellectual disabilities, autism and other related conditions with a view to promoting a better understanding and the most enlightened public sentiment and policy in these matters, and in this work the department may cooperate with local authorities, schools and social agencies. [2011, c. 542, Pt. A, §70 (AMD) .]

[ 2011, c. 542, Pt. A, §70 (AMD) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 560, §K27 (AMD). 2009, c. 299, Pt. A, §6 (AMD). 2011, c. 542, Pt. A, §§69, 70 (AMD).

## §1403. BOARDS OF VISITORS

*(REPEALED)*

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 812, §265 (AMD). 1987, c. 402, §A177 (AMD). 1987, c. 887, §5 (RP).

## §1403-A. PINELAND CENTER BOARD OF VISITORS

*(REPEALED)*

### SECTION HISTORY

1991, c. 70, §2 (NEW). 1993, c. 360, §H2 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 395, §G13 (RP).

## §1404. LEGAL ACTIONS

**1. Contract actions.** Actions founded on any contract made with the State Purchasing Agent, or with any official of the department under the authority granted by the State Purchasing Agent, on behalf of any of the state institutions, may be brought by the official making the contract or his successor in office.

[ 1983, c. 459, §7 (NEW) .]

**2. Actions for injuries to property.** Actions for injuries to the real or personal property of the State, used by any state institution and under the management of the chief administrative officer of the institution, may be prosecuted in the name of the officer or his successor in office.

[ 1983, c. 459, §7 (NEW) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW) .

## §1405. EMERGENCIES

When emergency situations are certified by the chief administrative officer of a state institution to exist at the institution, the commissioner may, with the approval of the Governor, assign departmental personnel as may be necessary to assist in controlling the emergency situation. [1983, c. 459, §7 (NEW) .]

**1. Temporary assignment.** The assignment of personnel shall be only for the period during which the emergency exists.

[ 1983, c. 459, §7 (NEW) .]

**2. Compensation.** Any personnel transferred are entitled to receive compensation as required by the Civil Service Law, rules and contract terms.

[ 1985, c. 785, Pt. B, §163 (AMD) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW) . 1985, c. 785, §B163 (AMD) .

## §1406. IMPROPER CONDUCT OF INSTITUTIONAL OFFICERS

The commissioner may inquire into any improper conduct imputed to state institutional officers in relation to the concerns of their institutions, and for that purpose may: [1983, c. 459, §7 (NEW) .]

**1. Subpoenas.** Issue subpoenas for witnesses and compel their attendance and the production of papers and writings by punishment for contempt in case of willful failure, neglect or refusal;

[ 1983, c. 459, §7 (NEW) .]

**2. Examination of witnesses.** Examine witnesses under oath; and

[ 1983, c. 459, §7 (NEW) .]



**3. Adjudication.** Adjudicate cases of alleged improper conduct in a manner similar to and with similar effect as cases of arbitration.

[ 1983, c. 459, §7 (NEW) .]

SECTION HISTORY

1983, c. 459, §7 (NEW).

## §1407. APPOINTMENT OF PHYSICIAN

In every state institution to which a person with mental illness or a person with an intellectual disability or autism may be committed, the commissioner shall appoint a physician experienced in the care and treatment of such persons and the necessary assistants to the physician. [2011, c. 542, Pt. A, §71 (AMD) .]

SECTION HISTORY

1983, c. 459, §7 (NEW). 2011, c. 542, Pt. A, §71 (AMD).

## §1408. COOPERATION WITH STATE DEPARTMENTS

Whenever it is determined advisable, the chief administrative officer of any institution providing services for persons with mental illness, intellectual disabilities or autism may cooperate with state departments to examine upon request and recommend suitable treatment and supervision for: [2011, c. 542, Pt. A, §72 (AMD) .]

**1. Mental illness, intellectual disability or autism.** Persons thought to have a mental illness, an intellectual disability or autism; and

[ 2011, c. 542, Pt. A, §72 (AMD) .]

**2. Juvenile Court.** Children brought before any Juvenile Court.

[ 1983, c. 459, §7 (NEW) .]

SECTION HISTORY

1983, c. 459, §7 (NEW). 2011, c. 542, Pt. A, §72 (AMD).

## §1409. PAYMENT FOR CARE AND TREATMENT OF RESIDENTS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Care and treatment" includes all goods and services provided, or caused to be provided, to a resident by the State. [1983, c. 459, §7 (NEW) .]

B. "Liable person" means a person liable for the care and treatment of a resident under subsection 3. [1983, c. 459, §7 (NEW) .]

B-1. "Resident," for purposes of this section and this section only, means any of the following:

(1) A person who is an inpatient; or

(2) A person who is an outpatient receiving services from any state institution, including outpatient clinic services. [2011, c. 674, §1 (AMD) .]

C. [2005, c. 683, Pt. B, §29 (RP) .]

D. [2011, c. 674, §2 (RP).]

[2011, c. 674, §§1, 2 (AMD).]

**2. Charges.** Charges under this section are governed as follows.

A. The commissioner shall establish by rule charges for the care and treatment of residents at any state institution. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2005, c. 256, §3 (AMD).]

B. Charges made under this section are a debt of the resident, or any person legally liable for the resident's care and treatment under this section, and are recoverable in any court of competent jurisdiction in a civil action brought in the name of the State. [1983, c. 459, §7 (NEW).]

[2005, c. 256, §3 (AMD).]

**3. Liable persons.** Each resident, his spouse, and his parent are jointly and severally liable for the care and treatment of the resident, whether the resident was committed or otherwise legally admitted, from the date of the resident's admission to a state institution, except that:

A. A parent is not liable for a child resident's care and treatment, unless the child resident was wholly or partially dependent for support upon the parent at the time of admission; and [1983, c. 701, §6 (AMD).]

B. [1983, c. 701, §6 (RP).]

C. The department may not charge any parent for the care and treatment of a child resident beyond the child's 18th birthday, or beyond 6 months from the date of the child's admission, whichever occurs later. [1983, c. 459, §7 (NEW).]

[1983, c. 701, §6 (AMD).]

**4. Financial statement forms.** Financial statement forms are governed as follows.

A. The commissioner shall prescribe financial statement forms which shall be completed by:

(1) The resident;

(2) Any person liable for the resident's care and treatment under this section; or

(3) Any fiduciary acting on behalf of the resident or person liable for the resident. [1983, c. 459, §7 (NEW).]

B. The form in each case shall be witnessed. [1983, c. 459, §7 (NEW).]

[1983, c. 459, §7 (NEW).]

**5. Determination of ability to pay.** After a resident is admitted into any state institution, the department shall:

A. Investigate to determine what property, real and personal, the resident has, and, in determining ability to pay, the department shall consider all income, debts, expenses, obligations and the number and condition of dependents; and [1983, c. 459, §7 (NEW).]

B. Investigate to determine whether there exist any persons liable under subsection 3 for the payment of charges for the resident's care and treatment.

(1) The department shall ascertain the financial condition of the persons, if any, and shall determine whether each person is financially able to pay the charges.

(2) In determining the person's ability to pay, the department shall consider all income, debts, expenses, obligations and the number and condition of dependents. [1983, c. 459, §7 (NEW).]

[1983, c. 459, §7 (NEW).]

**6. Obtaining information.** The obtaining of information under this section is governed as follows.

A. Every agency and department of the State shall render all reasonable assistance to the department in obtaining all information necessary for the proper implementation of the purposes of this section. [1983, c. 459, §7 (NEW).]

B. To carry out the purposes of this section, the commissioner may administer oaths, take testimony, subpoena and compel the attendance of witnesses, and subpoena and compel the production of books, papers, records and documents deemed material or pertinent in connection with the commissioner's duty of securing payments for care and treatment as provided in this section.

(1) Any person failing to obey a subpoena may, upon petition of the commissioner to any Justice of the Superior Court, be ordered by the justice to appear and show cause for his disobedience of the subpoena.

(2) The justice, after hearing, may order that the subpoena be obeyed or, if it is made to appear to the justice that the subpoena was for any reason inappropriately issued, may dismiss the petition. [1983, c. 459, §7 (NEW).]

C. Upon request of the commissioner, banking organizations, insurance companies, brokers or fiduciaries shall furnish to the commissioner full information concerning the earnings of, income of, funds deposited to the credit of or funds owing to any resident, or any person liable under subsection 3 for the resident.

(1) The information shall be provided in writing and shall be duly certified.

(2) The certified statement is admissible in evidence in any action or proceeding to compel payment for the care and treatment of the resident.

(3) The certified statement is prima facie evidence of the facts stated in the statement. [1983, c. 459, §7 (NEW).]

[1983, c. 459, §7 (NEW).]

**7. Inability to pay.** When it is determined that any resident or liable person is unable to pay all or part of the charges for care and treatment, the commissioner may cancel, suspend or reduce charges in accordance with the resident's or liable person's ability to pay.

[1983, c. 459, §7 (NEW).]

**8. Postponement of billing.** The commissioner may enter into an agreement with any resident or liable person to postpone billing for care and treatment for any period of time.

[1983, c. 459, §7 (NEW).]

**9. Benefit payments.** The chief administrative officer of any state institution may receive as payee any benefits from social security, veterans' administration, railroad retirement or any other like benefits paid on behalf of any resident.

A. The chief administrative officer shall apply the benefits toward the care and treatment of the resident in accordance with charges made by the department. [1983, c. 459, §7 (NEW).]

B. Any surplus from the payments shall be held in a personal account at the hospital in the name of the resident and shall be available for the resident's personal needs. [1983, c. 459, §7 (NEW).]

[ 1983, c. 459, §7 (NEW) .]

**10. Claims against estates.** The State has a claim against the estate of any resident, and the estate of any liable person, for any amount due to the State at the date of death of the resident or the liable person, including any claim arising under an agreement entered into under this section, enforceable in the Probate Court.

A. The state's claim has priority over all unsecured claims against the estate, except:

- (1) Administrative expenses, including probate fees and taxes;
- (2) Expenses of the last sickness; and
- (3) Funeral expenses, not exceeding \$400, exclusive of the honorarium of the clergy and cemetery expenses. [1983, c. 459, §7 (NEW).]

B. The Attorney General shall collect any claim which the State may have against the estate. [1983, c. 459, §7 (NEW).]

C. The State may not enforce a claim against any real estate while it is occupied as a home by the surviving spouse of the resident or liable person and while the surviving spouse remains unmarried. [1983, c. 459, §7 (NEW).]

[ 1983, c. 459, §7 (NEW) .]

**11. Reimbursement of providers.** Notwithstanding any other law, if part of the care and treatment of a resident under this section is provided by a party other than the State, the commissioner shall pay to the other party, from the fee collected by the department for the care and treatment of the resident, the portion of those costs borne by the other party in the same ratio as the fee collected to the total charge made, except that:

A. This subsection may not be construed as a limitation on compensation for providers of resident care and treatment; [2011, c. 674, §3 (AMD).]

B. This subsection may not be construed as a limitation on contractual arrangements between the providers and the State; and [2011, c. 674, §4 (AMD).]

C. For a resident receiving services, including medical care, goods, prescription drugs and other medications, outside a state institution, the commissioner may pay the provider of those services an amount no greater than the reimbursement rate applicable to that provider and that service under the Medicare fee schedule. [2011, c. 674, §5 (NEW).]

[ 2011, c. 674, §§3-5 (AMD) .]

**12. Prohibited acts.** A person is guilty of contempt if he fails to obey a subpoena when ordered to do so by a Justice of the Superior Court under subsection 6, upon application by the commissioner to the Superior Court for an order of contempt.

[ 1983, c. 459, §7 (NEW) .]

**13. Special revenue account; Riverview Psychiatric Center.** The commissioner shall establish a special revenue account for the Riverview Psychiatric Center and shall deposit into it payments or income received from residents of the Riverview Psychiatric Center, the Medicaid program or other 3rd-party payors. The commissioner shall use the funds on deposit for expenses of the Riverview Psychiatric Center.

[ 2011, c. 674, §6 (AMD) .]

**14. Special revenue account; Dorothea Dix Psychiatric Center.** The commissioner shall establish a special revenue account for the Dorothea Dix Psychiatric Center and shall deposit into it payments or income received from residents of the Dorothea Dix Psychiatric Center, the Medicaid program or other 3rd-party payors. The commissioner shall use the funds on deposit for expenses of the Dorothea Dix Psychiatric Center.

[ 1991, c. 528, Pt. Q, §6 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. Q, §6 (NEW); 2005, c. 236, §3 (REV) .]

**15. General Fund accounts; disproportionate share hospital match.** The commissioner shall establish General Fund accounts to provide the General Fund match for eligible disproportionate share hospital components in the Riverview Psychiatric Center and the Dorothea Dix Psychiatric Center. Any unencumbered balances of General Fund appropriations remaining at the end of each fiscal year must be carried forward to be used for the same purposes. Available unencumbered balances at the end of each fiscal year in the Personal Services line category of the accounts may be transferred to the All Other line category by financial order upon the recommendation of the State Budget Officer and approval of the Governor.

[ 2011, c. 1, Pt. S, §2 (AMD) .]

**16. Store established.** The commissioner may establish a store within the Riverview Psychiatric Center for the retail sale of sundries and gift items.

[ 2003, c. 673, Pt. I, §1 (NEW) .]

**17. Riverview Psychiatric Center Store account.** The commissioner may establish a nonlapsing Other Special Revenue Funds account for a store located in the Riverview Psychiatric Center pursuant to the authority under subsection 16 and shall deposit into it payments or income received from customers of the store. The commissioner shall use the funds on deposit for expenses of the store.

[ 2003, c. 673, Pt. I, §1 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §5 (AMD). 1983, c. 701, §6 (AMD). 1991, c. 528, §Q6 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §Q6 (AMD). 1991, c. 780, §DD1 (AMD). 1993, c. 508, §J1 (AMD). 2003, c. 673, §I1 (AMD). 2005, c. 236, §3 (REV). 2005, c. 256, §§1-5 (AMD). 2005, c. 457, §NN4 (AMD). 2005, c. 457, §NN8 (AFF). 2005, c. 683, §§B29,30 (AMD). 2009, c. 571, Pt. SSS, §1 (AMD). 2011, c. 1, Pt. S, §2 (AMD). 2011, c. 674, §§1-6 (AMD).

## §1410. POSTING OF POLITICAL MATERIAL

The chief administrative officer of each state institution shall provide in at least one accessible area in each institution an appropriate space for the posting of written political material sent for that purpose to the chief administrative officer by candidates for state office or federal office in this State. [1983, c. 459, §7 (NEW) .]

**1. One item limit.** Not more than one item of written political material may be posted in one place on behalf of any one candidate.

[ 1983, c. 459, §7 (NEW) .]

**2. Removal.** Written political material shall be removed after the elections for which it is intended for use.

[ 1983, c. 459, §7 (NEW) .]

**3. Voting place.** If there is a voting place within the institution, the posting place may not be located within 250 feet of the entrance to the voting place.

[ 1983, c. 459, §7 (NEW) .]

**4. Violation.** The posting of written political material under this section is not a violation of Title 21-A, section 32 or Title 21-A, section 674, subsection 1, paragraph C.

[ 1993, c. 473, §44 (AMD); 1993, c. 473, §46 (AFF) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 506, §A71 (AMD). 1993, c. 473, §44 (AMD). 1993, c. 473, §46 (AFF).

## §1411. PUBLIC WAYS AND PARKING AREAS

**1. Rules.** The chief administrative officers of state institutions may promulgate and enforce rules, subject to the approval of the commissioner, governing the use of public ways and parking areas maintained by the State at the state institutions.

A. The rules shall be promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1983, c. 459, §7 (NEW) .]

B. The Secretary of State shall forward a copy of the rules, attested under the Great Seal of the State, to the District Court in the area of jurisdiction. [1983, c. 459, §7 (NEW) .]

[ 1983, c. 459, §7 (NEW) .]

**2. Special police officers.** The chief administrative officers of state institutions may appoint and employ, subject to the Civil Service Law, special police officers for the purpose of enforcing rules promulgated under subsection 1.

A. The special police officers shall:

(1) Patrol all the public ways and parking areas subject to this section;

(2) Enforce rules promulgated under this section; and

(3) Arrest and prosecute violators of the rules. [1983, c. 459, §7 (NEW) .]

B. The State Police, sheriffs, deputy sheriffs, police officers and constables who have jurisdiction over the areas in which the institutions are located shall, insofar as possible, cooperate with the special police officers in the enforcement of the rules promulgated under subsection 1. [1983, c. 459, §7 (NEW) .]

[ 1985, c. 785, Pt. B, §164 (AMD) .]

**3. Court procedure.** The District Court in the areas in which the institutions are located has jurisdiction in all proceedings brought under this section.

A. The District Court shall take judicial notice of all rules promulgated under subsection 1. [1983, c. 459, §7 (NEW) .]

B. In any prosecution for a violation of the rules, the complaint may allege the offense as in prosecutions under a general statute and need not recite the rule. [1983, c. 459, §7 (NEW) .]

[ 1983, c. 459, §7 (NEW) .]

**4. Prohibited acts; fine.** A person who violates any rule adopted under this section commits a civil violation for which a fine may be adjudged in an amount consistent with the amount charged for a similar violation by the municipality in which the institution is located, but not to exceed the maximum amount provided for a traffic infraction under Title 29-A, section 103. Notwithstanding any other law, the fines and costs of court paid under this section inure to the municipality in which the proceedings take place.

A. [1991, c. 313, (RP).]

B. [1991, c. 313, (RP).]

C. [1991, c. 313, (RP).]

D. [1991, c. 313, (RP).]

[ 2013, c. 381, Pt. C, §5 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 785, §B164 (AMD). 1991, c. 313, (AMD). 1995, c. 65, §A136 (AMD). 1995, c. 65, §§A153,C15 (AFF). 2013, c. 381, Pt. C, §5 (AMD).

### **§1412. MILITARY AND NAVAL CHILDREN'S HOME** **(REPEALED)**

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 503, §5 (RP).

## Article 2: CLIENTS GENERALLY

### **§1430. RIGHTS**

Any resident of a state institution has a right to nutritious food in adequate quantities, adequate professional medical care, an acceptable level of sanitation, ventilation and light, a reasonable amount of space per person in any sleeping area, a reasonable opportunity for physical exercise and recreational activities, protection against any physical or psychological abuse and a reasonably secure area for the maintenance of permitted personal effects. [1983, c. 459, §7 (NEW).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).

### **§1431. INDEFINITE CONVALESCENT STATUS**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Living conditions" includes, but is not limited to, the physical conditions of a residential facility, the individual treatment plan provided for each outpatient client and the programs for treatment available to and appropriate for each outpatient client. [1983, c. 459, §7 (NEW).]

B. "Residential facility" means a boarding home, nursing home, foster home, group home or halfway house licensed by the Department of Health and Human Services or used by the Department of Health and Human Services. [1983, c. 459, §7 (NEW); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

[ 1983, c. 459, §7 (NEW); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

**2. Requirements.** The chief administrative officer of any state institution, or a person designated by the chief administrative officer, may place any person who has been hospitalized based on a diagnosis of mental illness, intellectual disability or autism, except residents described in chapter 3, subchapter 4, article 2, on indefinite convalescence status, if the officer or the officer's designee determines that the residential facility in which the person will be residing is at least equivalent in the quality of living conditions to the state institution in which the person is hospitalized.

[ 2011, c. 542, Pt. A, §73 (AMD) .]

**3. Standards.** The commissioner shall establish standards for assessing whether or not living conditions in residential facilities are equivalent to the existing living conditions in state institutions.

[ 1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 560, §82 (AMD). 1995, c. 560, §83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 542, Pt. A, §73 (AMD).

## §1432. ADMINISTRATION OF MEDICATION

The administration of medication in state institutions shall be in accordance with rules established by the State Board of Nursing. [1983, c. 459, §7 (NEW).]

**1. Maine Administrative Procedure Act.** The State Board of Nursing shall establish rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

[ 1983, c. 459, §7 (NEW) .]

**2. Considerations.** In establishing rules for each type of state institution, the State Board of Nursing shall consider, among other factors:

A. The general health of the persons likely to receive medication; [1983, c. 459, §7 (NEW).]

B. The number of persons served by the institution; and [1983, c. 459, §7 (NEW).]

C. The number of persons employed at the institution. [1983, c. 459, §7 (NEW).]

[ 1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).



## §1433. ALIENS

**1. Notification of immigration officer.** When a person is admitted or committed to a state, county, city or private institution which is supported wholly or in part by public funds, the chief administrative officer of the institution shall inquire at once into the nationality of the person and, if it appears that the person is an alien, the chief administrative officer shall notify immediately the United States immigration officer in charge of the district in which the institution is located, of:

A. The date of and the reason for the alien's admission or commitment; [1983, c. 459, §7 (NEW).]

B. The length of time for which the alien is admitted or committed; [1983, c. 459, §7 (NEW).]

C. The country of which the alien is a citizen; and [1983, c. 459, §7 (NEW).]

D. The date on which and the port at which the alien last entered the United States. [1983, c. 459, §7 (NEW).]

[ 1983, c. 459, §7 (NEW) .]

**2. Copy of record to immigration officer.** Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing an alien to a state, county, city or private institution which is supported wholly or in part by public funds, the clerk of the court shall furnish without charge a certified copy of any record pertaining to the alien's case.

[ 1983, c. 459, §7 (NEW) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW).

## §1434. RESIDENT'S PROPERTY PRESUMED ABANDONED

Any property abandoned or unclaimed by a resident of a state institution must be disposed of according to Title 33, chapter 41. [2003, c. 20, Pt. T, §33 (AMD).]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 2003, c. 20, §T33 (AMD).

## §1435. UNNATURAL DEATH OF RESIDENT

When the death of any resident in a state institution is not clearly the result of natural causes, an examination and inquest shall be held as in other cases, and the commissioner or the chief administrative officer of the institution shall cause a medical examiner to be immediately notified for that purpose. [1983, c. 459, §7 (NEW).]

### SECTION HISTORY

1983, c. 459, §7 (NEW).

## §1436. RULES REGARDING CARDIOPULMONARY RESUSCITATION

The department shall promulgate rules regarding the use of cardiopulmonary resuscitation in state institutions, pursuant to the Maine Administrative Procedure Act, Title 5, section 8053. [1987, c. 305, (NEW).]

### SECTION HISTORY

1987, c. 305, (NEW). RR 2009, c. 2, §95 (COR).

## Subchapter 4: NEGOTIATIONS WITH MUNICIPALITIES IN WHICH STATE INSTITUTIONS ARE LOCATED HEADING: PL 1989, C. 591, §4 (NEW)

### §1602. NEGOTIATIONS WITH MUNICIPALITIES

The Commissioner of Health and Human Services shall negotiate with officials of a municipality in which state institutions for both juveniles and adults constructed after the effective date of this section are located to provide state reimbursement to that municipality for the net increased costs that a new state institution imposes on that municipality. Negotiations may commence only upon request of municipal officials and only within 6 months after the net increased costs arise. As used in this section, unless the context otherwise indicates, the following terms have the following meanings: [1995, c. 560, Pt. K, §28 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §7 (REV).]

**1. State institution.** "State institution" means those facilities outlined in section 1001, subsection 8.

[ 1989, c. 591, §4 (NEW) .]

**2. Net increased costs.** "Net increased costs" means the costs of those services rendered to the facility by the municipality and the costs of any adverse impact proximately caused by the operation of the facility, subtracted from the fair market value of those services rendered by the facility to the municipality.

[ 1989, c. 591, §4 (NEW) .]

#### SECTION HISTORY

1989, c. 591, §4 (NEW). 1995, c. 560, §K28 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B7 (REV).

## Subchapter 5: FAMILY SUPPORT SERVICES HEADING: PL 1991, C. 316, §2 (NEW)

### §1801. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 316, §2 (NEW).]

**1. Crisis intervention.** "Crisis intervention" means an unplanned and temporary service necessary to alleviate a crisis and preserve the living arrangements of a person who receives services from the department.

[ 1991, c. 316, §2 (NEW) .]

**2. Family support services.** "Family support services" means services that enable a family, which is otherwise eligible to receive services from the department, to maintain and care for its minor or adult member at home. Family support services include but are not limited to the following:

- A. Dental and medical care; [1991, c. 316, §2 (NEW).]
- B. Respite care; [1991, c. 316, §2 (NEW).]
- C. Recreation and leisure activities; [1991, c. 316, §2 (NEW).]
- D. Homemaker services; [1991, c. 316, §2 (NEW).]
- E. Transportation; [1991, c. 316, §2 (NEW).]
- F. Personal assistance services; [1991, c. 316, §2 (NEW).]
- G. Home health services; [1991, c. 316, §2 (NEW).]
- H. Therapeutic and nursing services; [1991, c. 316, §2 (NEW).]

- I. Home and vehicle modifications; [1991, c. 316, §2 (NEW).]
- J. Equipment and supplies; [1991, c. 316, §2 (NEW).]
- K. Family counseling services; [1991, c. 316, §2 (NEW).]
- L. Communication services; [1991, c. 316, §2 (NEW).]
- M. Crisis intervention; [1991, c. 316, §2 (NEW).]
- N. Specialized utility costs; [1991, c. 316, §2 (NEW).]
- O. Integrated child care; [1991, c. 316, §2 (NEW).]
- P. Specialized diagnosis and evaluation; [1991, c. 316, §2 (NEW).]
- Q. Specialized nutrition and clothing; [1991, c. 316, §2 (NEW).]
- R. Family education and training; [1991, c. 316, §2 (NEW).]
- S. Service coordination; [1991, c. 316, §2 (NEW).]
- T. Information services; [1991, c. 316, §2 (NEW).]
- U. Assistive technology; and [1991, c. 316, §2 (NEW).]
- V. Permanency planning. [1991, c. 316, §2 (NEW).]

[ 1991, c. 316, §2 (NEW) .]

**3. Respite care.** "Respite care" means a temporary service that provides a respite to a family in a planned and predictable manner. Respite care may include but is not limited to bringing outside caretakers into the home and bringing a child outside the home for services.

[ 1991, c. 316, §2 (NEW) .]

**4. Service coordination.** "Service coordination" means a lifelong, goal-oriented process for coordination of the range of services needed and wanted by persons with disabilities and their families.

[ 1991, c. 316, §2 (NEW) .]

**5. Therapeutic services.** "Therapeutic services" means occupational, physical, speech and language, respiratory, and vision therapy, counseling and other therapies to increase, maintain or improve the functional capabilities of persons with disabilities.

[ 1991, c. 316, §2 (NEW) .]

#### SECTION HISTORY

1991, c. 316, §2 (NEW).

## §1802. PRINCIPLES OF FAMILY SUPPORT

The department shall provide family support services in accordance with the following principles.  
[1991, c. 316, §2 (NEW).]

**1. Importance of family setting and home care.** Children, regardless of the type or severity of their disabilities, belong with and do best with families. Accordingly, families should receive whatever support is necessary to care for their family members with disabilities at home.

[ 1991, c. 316, §2 (NEW) .]

**2. Focus on whole family.** Family support must focus on the needs of the entire family.

[ 1991, c. 316, §2 (NEW) .]

**3. Flexibility.** Family needs change over time and family support must be flexible and responsive to the unique needs and strengths of individual families.

[ 1991, c. 316, §2 (NEW) .]

**4. Integration.** Families should be supported to fully integrate their family members with disabilities into education, employment and social settings in their own communities. Support to families must build on social networks and other sources of support that exist in their communities.

[ 1991, c. 316, §2 (NEW) .]

**5. Long-term support.** Family support is needed throughout the life spans of family members with disabilities.

[ 1991, c. 316, §2 (NEW) .]

**6. Family expertise.** Families should be recognized as experts regarding the needs of their members with disabilities. The family should be the primary decision-making unit regarding the support, services and opportunities it needs. Accordingly, families must be included in the planning and implementation of family support systems.

[ 1991, c. 316, §2 (NEW) .]

**7. Family contributions.** Families that have members with disabilities should be recognized for enriching the lives of all citizens through their contributions to the economic health and social fabric of the State.

[ 1991, c. 316, §2 (NEW) .]

**8. Individual needs and aspirations.** People with disabilities have personal needs and preferences to live, work, learn, grow and to have relationships. People with disabilities have abilities, competencies and aspirations and should be supported to pursue their personal desires and reach their fullest potential.

[ 1991, c. 316, §2 (NEW) .]

#### SECTION HISTORY

1991, c. 316, §2 (NEW).

### §1803. FAMILY SUPPORT POLICY COORDINATION

*(REPEALED)*

#### SECTION HISTORY

1991, c. 316, §2 (NEW). 1995, c. 560, §K29 (AMD). 1999, c. 668, §123 (AMD). 1999, c. 731, §L3 (RP). 2001, c. 471, §A35 (RP).

### §1804. REGIONAL FAMILY SUPPORT COUNCILS

*(REPEALED)*

#### SECTION HISTORY

1991, c. 316, §2 (NEW). 1999, c. 668, §124 (RP). 1999, c. 731, §L4 (RP).

## **§1805. MAINE FAMILY SUPPORT COUNCIL**

***(REPEALED)***

### SECTION HISTORY

1991, c. 316, §2 (NEW). 1999, c. 668, §124 (RP). 1999, c. 731, §L4 (RP).

## **§1806. AUTHORITY TO PROVIDE FAMILY SUPPORT SERVICES**

The commissioner may provide family support services directly from the department or through agreements with community agencies. Agreements with community agencies must be in accordance with section 1208, subsections 2 and 3. [1991, c. 316, §2 (NEW).]

### SECTION HISTORY

1991, c. 316, §2 (NEW).

## **§1807. RULES**

The commissioner shall adopt rules in accordance with Title 5, chapter 375 to implement this subchapter. [1991, c. 316, §2 (NEW).]

### SECTION HISTORY

1991, c. 316, §2 (NEW).

## **Subchapter 6: REPORTING ANIMAL CRUELTY, ABUSE OR NEGLECT**

## **§1901. ANIMAL CRUELTY, ABUSE OR NEGLECT; REPORTING**

**1. Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Animal" means every living, sentient creature not a human being. [2007, c. 140, §9 (NEW).]

B. "Cruelty, abuse or neglect" means every act, omission or instance of neglect when unnecessary or unjustifiable pain or suffering is caused or permitted. [2007, c. 140, §9 (NEW).]

C. "Owner" means a person, firm, partnership, association or corporation owning, keeping or harboring an animal. [2007, c. 140, §9 (NEW).]

D. "Reasonably suspect" means to hold an objectively reasonable suspicion based upon facts that would cause a reasonable person in a like position to draw on that person's training or experience to suspect animal cruelty, abuse or neglect. [2007, c. 140, §9 (NEW).]

[ 2007, c. 140, §9 (NEW) .]

**2. Report.** An employee of a state-funded child or adult protective services agency or other social service agency, including those providing mental health services that are funded or licensed by the department, while acting in the employee's professional capacity or within the scope of the employee's employment, who has knowledge of or observes an animal that the employee knows or reasonably suspects

has been the victim of cruelty, abuse or neglect may report the known or reasonably suspected animal cruelty, abuse or neglect to the local animal control officer or to the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902.

[ 2007, c. 140, §9 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

**3. Duty.** Nothing in this section may be construed to impose a duty to investigate known or reasonably suspected animal cruelty, abuse or neglect.

[ 2007, c. 140, §9 (NEW) .]

**4. Immunity from liability.** A person participating in good faith in reporting under this subchapter is immune from any civil or criminal liability that might otherwise result from these actions, including, but not limited to, any civil or criminal liability that might otherwise arise under state or local laws or rules regarding confidentiality of information.

In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.

[ 2007, c. 140, §9 (NEW) .]

#### SECTION HISTORY

2007, c. 140, §9 (NEW). 2011, c. 657, Pt. W, §5 (REV).

### Subchapter 7: MENTAL HEALTH HOMICIDE, SUICIDE AND AGGRAVATED ASSAULT REVIEW BOARD

## §1931. MENTAL HEALTH HOMICIDE, SUICIDE AND AGGRAVATED ASSAULT REVIEW BOARD

The Mental Health Homicide, Suicide and Aggravated Assault Review Board, referred to in this subchapter as "the board," is established. The board shall review homicides, suicides and aggravated assaults involving a person with severe and persistent mental illness as defined in section 3801, subsection 8-A.

[2007, c. 609, §2 (NEW) .]

**1. Members.** The board consists of:

A. An attorney who is a member of a statewide association of criminal defense lawyers appointed by the President of the Senate; [2007, c. 609, §2 (NEW) .]

B. A psychiatrist appointed by the Speaker of the House; [2007, c. 609, §2 (NEW) .]

C. A psychiatric nurse appointed by the President of the Senate; [2007, c. 609, §2 (NEW) .]

D. A psychologist appointed by the Speaker of the House; [2007, c. 609, §2 (NEW) .]

E. A law enforcement officer appointed by the President of the Senate; [2007, c. 609, §2 (NEW) .]

F. The Commissioner of Health and Human Services or the commissioner's designee; [2007, c. 609, §2 (NEW) .]

G. The Commissioner of Corrections or the commissioner's designee; [2007, c. 609, §2 (NEW) .]

H. The Commissioner of Public Safety or the commissioner's designee; [2007, c. 609, §2 (NEW) .]

I. A judge or justice assigned by the Chief Justice of the Supreme Judicial Court; [2007, c. 609, §2 (NEW) .]

J. A representative of a prosecutors association designated by the Attorney General; [ 2007, c. 609, §2 (NEW) . ]

K. An assistant attorney general responsible for the prosecution of homicide cases designated by the Attorney General; [ 2007, c. 609, §2 (NEW) . ]

L. An assistant attorney general responsible for mental health cases designated by the Attorney General; [ 2007, c. 609, §2 (NEW) . ]

M. A mental health service provider appointed by the Speaker of the House; [ 2007, c. 609, §2 (NEW) . ]

N. A victim-witness advocate designated by the Attorney General; and [ 2007, c. 609, §2 (NEW) . ]

O. Three persons appointed by the Governor from a list of nominees designated by statewide organizations that advocate for the rights of persons with serious and persistent mental illness. At least one of the appointees must represent the interests of persons with severe and persistent mental illness who are victims of crimes. [ 2007, c. 609, §2 (NEW) . ]

[ 2007, c. 609, §2 (NEW) . ]

**2. Terms.** Members who are not state officials serve 2-year terms without compensation.

[ 2007, c. 609, §2 (NEW) . ]

**3. Recommendations.** The board shall recommend to state and local agencies methods of preventing homicides, suicides and aggravated assaults involving persons with severe and persistent mental illness, including modifications of laws, rules, policies and procedures.

[ 2007, c. 609, §2 (NEW) . ]

**4. Collect data.** The board shall collect and compile data related to homicides, suicides and aggravated assaults involving persons with severe and persistent mental illness. The board shall ensure that the collection of data and work of the board do not interfere with any pending criminal investigation or prosecution by state or county authorities.

[ 2007, c. 609, §2 (NEW) . ]

**5. Information and records.** In any case subject to review by the board, upon written request of the board, any interested party that possesses information or records that are necessary and relevant to a review under this section shall as soon as practicable provide the board with the information and records. Persons disclosing or providing information or records upon the request of the board in compliance with this subsection are not criminally or civilly liable for disclosing or providing information or records.

[ 2007, c. 609, §2 (NEW) . ]

**6. Confidentiality.** The proceedings of the board are confidential and are not public meetings for the purposes of the laws governing freedom of access, Title 1, chapter 13. Records of the board are confidential, are not public records for the purposes of the laws governing freedom of access, Title 1, chapter 13 and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The board shall disclose conclusions and recommendations of the board upon request in a manner that does not identify the parties, victims or witnesses. The board and members of the board may not disclose information, records or data that are otherwise classified as confidential.

[ 2007, c. 609, §2 (NEW) . ]

**7. Unlawful dissemination.** A member of the board is guilty of unlawful dissemination if the member of the board knowingly disseminates records or information from those records that is confidential pertaining to a homicide, suicide or aggravated assault subject to review by the board. Unlawful dissemination is a Class E crime, punishable by a fine of not more than \$500 or by imprisonment of not more than 30 days.

[ 2007, c. 609, §2 (NEW) .]

**8. Report.** The board shall submit a report on the board's activities, conclusions and recommendations to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 30, 2009 and biennially thereafter. The committee shall review the report in a public meeting at which members of the public are provided an opportunity to address the committee.

[ 2007, c. 609, §2 (NEW) .]

#### SECTION HISTORY

2007, c. 609, §2 (NEW) .



## Chapter 3: MENTAL HEALTH

### Subchapter 1: MENTAL HEALTH SERVICES HEADING: PL 1995, C. 560, PT. K, §30 (RPR)

#### §3001. GENERAL

The Department of Health and Human Services is responsible for the direction of the mental health programs in the state institutions and for the promotion and guidance of mental health programs within the communities of the State. [1995, c. 560, Pt. K, §31 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

##### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 410, §CCC15 (AMD). 1995, c. 560, §K31 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV).

#### §3002. DIRECTOR

*(REPEALED)*

##### SECTION HISTORY

1983, c. 459, §7 (NEW). 1987, c. 887, §6 (AMD). 1993, c. 410, §CCC16 (RP).

#### §3003. RULES

**1. Promulgation.** The commissioner shall adopt rules, subject to the Maine Administrative Procedure Act, Title 5, chapter 375, for the enhancement and protection of the rights of clients receiving services from the department, from any hospital pursuant to subchapter IV or from any program or facility administered or licensed by the department under section 1203-A.

[ 1993, c. 410, Pt. CCC, §17 (AMD) . ]

**2. Requirements.** The rules shall include, but are not limited to:

A. Establishment of the right to provision of treatment and related services in the least restrictive appropriate setting; [1983, c. 459, §7 (NEW).]

B. Establishment of the right to an individualized treatment or service plan, to be developed with the participation of the client; [1983, c. 459, §7 (NEW).]

C. Standards for informed consent to treatment, including reasonable standards and procedural mechanisms for determining when to treat a client absent informed consent, consistent with applicable law, except that involuntary treatment of involuntarily hospitalized incapacitated persons who are unwilling or unable to comply with treatment is allowed solely in accordance with the provisions of section 3861, subsection 3 or section 3864, subsection 1-A; [2007, c. 580, §1 (AMD).]

D. Standards for participation in experimentation and research; [1983, c. 459, §7 (NEW).]

E. Standards pertaining to the use of seclusion and restraint; [1983, c. 459, §7 (NEW).]

F. Establishment of the right to appropriate privacy and to a humane treatment environment; [1983, c. 459, §7 (NEW).]

G. Establishment of the right to confidentiality of records and procedures pertaining to a person's right to access to his mental health care records; [1983, c. 459, §7 (NEW).]

H. Establishment of the right to receive visitors and to communicate by telephone and mail; [1983, c. 459, §7 (NEW).]

I. Procedures to ensure that clients are notified of their rights; [1983, c. 459, §7 (NEW).]

J. The right to assistance in protecting a right or advocacy service in the exercise or protection of a right; [1987, c. 246, §1 (AMD).]

K. Provisions for a fair, timely and impartial grievance procedure for the purpose of ensuring appropriate administrative resolution of grievances with respect to infringement of rights; and [1987, c. 246, §1 (AMD).]

L. To the extent that state and community resources are available, establishment of the rights of long-term mentally ill clients containing the following requirements:

(1) The right to a service system which employs culturally normative and valued methods and settings;

(2) The right to coordination of the disparate components of the community service system;

(3) The right to individualized developmental programming which recognizes that each long-term mentally ill individual is capable of growth or slowing of deterioration;

(4) The right to a continuum of community services allowing a gradual transition from a more intense level of service; and

(5) The right to the maintenance of natural support systems, such as family and friends of the long-term mentally ill individual and formal and informal networks of mutual and self-help. [1987, c. 246, §2 (NEW).]

[2007, c. 580, §1 (AMD).]

**3. Public hearing.** The commissioner shall hold a public hearing before adopting these rules and shall give notice of the public hearing pursuant to the Maine Administrative Procedure Act, Title 5, section 8053.

[1995, c. 560, Pt. K, §32 (AMD).]

**4. Legislative review.** When a rule is proposed or adopted under this section, a copy of the proposed or adopted rule shall be sent to the legislative committee having jurisdiction over health and institutional services.

A. The committee may review the rule and, if it determines that an adopted rule should be stricken or amended, the committee may prepare legislation to accomplish that purpose and submit the legislation to the full Legislature in accordance with legislative rules. [1983, c. 459, §7 (NEW).]

B. The adopted rule shall remain in effect unless the full Legislature acts to strike or amend it, or it is repealed or amended by the director in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1983, c. 459, §7 (NEW).]

[1983, c. 459, §7 (NEW).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 645, §4 (AMD). 1987, c. 246, §§1,2 (AMD). 1993, c. 410, §CCC17 (AMD). 1995, c. 560, §K32 (AMD). 2007, c. 446, §1 (AMD). 2007, c. 446, §7 (AFF). 2007, c. 580, §1 (AMD).

## §3004. COMMUNITY SUPPORT SYSTEMS

**1. Definition.** As used in this section, unless the context otherwise indicates, the term "community support system" means the entire complex of mental health, rehabilitative, residential and other support services in the community to ensure community integration and the maintenance of a decent quality of life for persons with chronic mental illness.

[ 1983, c. 580, §6 (NEW) . ]

**2. General policy.** The department shall develop programs to:

A. Promote and support the development and implementation of comprehensive community support systems to ensure community integration and the maintenance of a decent quality of life for persons with chronic mental illness in each of the mental health service areas in the State; and [ 1983, c. 580, §6 (NEW) . ]

B. Strengthen the capacity of families, natural networks, self-help groups and other community resources in order to improve the support for persons with chronic mental illness. [ 1983, c. 580, §6 (NEW) . ]

[ 1995, c. 560, Pt. K, §33 (AMD) . ]

**3. Duties.** The department shall:

A. Provide technical assistance for program development, promote effective coordination with health and other human services and develop new resources in order to improve the availability and accessibility of comprehensive community support services to persons with chronic mental illness; [ 1983, c. 580, §6 (NEW) . ]

B. Assess service needs, monitor service delivery related to these needs and evaluate the outcome of programs designed to meet these needs in order to enhance the quality and effectiveness of community support services; [ 1985, c. 768, §4 (AMD) . ]

C. Prepare a report that describes the system of community support services in each of the mental health service regions and statewide.

(1) The report must include both existing service resources and deficiencies in the system of services.

(2) The report must include an assessment of the roles and responsibilities of mental health agencies, human services agencies, health agencies and involved state departments and must suggest ways in which these agencies and departments can better cooperate to improve the service system for people with chronic mental illness.

(3) The report must be prepared biennially and must be submitted to the joint standing committee of the Legislature having jurisdiction over human resources by December 15th of every even-numbered year.

(4) The committee shall review the report and make recommendations with respect to administrative and funding improvements in the system of community support services to persons with chronic mental illness; and [ 1995, c. 560, Pt. K, §33 (AMD) . ]

D. Participate with school administrative units in transition planning for each student with chronic mental illnesses who is receiving special education services and who is 16 years of age or older, or 14 years of age if determined appropriate by the student's individualized education program team, and shall assign appropriate staff as a transition contact person and as a member of the transition planning team for each student. [2011, c. 348, §9 (AMD).]

[ 2011, c. 348, §9 (AMD) .]

#### SECTION HISTORY

1983, c. 580, §6 (NEW). 1985, c. 768, §§4,5 (AMD). 1987, c. 404, §1 (AMD). 1993, c. 410, §CCC18 (AMD). 1995, c. 560, §K33 (AMD). 2009, c. 147, §12 (AMD). 2011, c. 348, §9 (AMD).

### **§3005. SERVICES TO PERSONS WHO ARE DEAF OR HEARING-IMPAIRED** *(REPEALED)*

#### SECTION HISTORY

1985, c. 467, (NEW). 1987, c. 331, (RPR). 1993, c. 410, §CCC19 (AMD). 1993, c. 519, §2 (RP).

### **§3006. STATE MENTAL HEALTH PLAN** *(REPEALED)*

#### SECTION HISTORY

1987, c. 404, §2 (NEW). 1987, c. 769, §A126 (RPR). 1987, c. 887, §7 (AMD). 1991, c. 781, §A1 (RP).

### **§3006-A. STATE MENTAL HEALTH PLAN** *(REPEALED)*

#### SECTION HISTORY

1991, c. 781, §A2 (NEW). MRSA T.34B ., §3006A (RP).

### **§3007. TEENAGE SUICIDE PREVENTION PROGRAM**

The department shall, in cooperation with the Department of Education and the "local action councils" funded in Public Law 1987, chapter 349, Part A under the heading "Human Services, Department of," develop a teenage suicide prevention strategy and a model suicide prevention program to be presented in the secondary schools of the State. Development of such a program must include preparation of relevant educational materials that must be distributed in the schools. [2003, c. 2, §101 (COR).]

#### SECTION HISTORY

1987, c. 783, §1 (NEW). 1989, c. 700, §A164 (AMD). 1993, c. 410, §CCC20 (AMD). 1995, c. 560, §K34 (AMD). RR 2003, c. 2, §101 (COR). 2003, c. 689, §B6 (REV).

### **§3008. SEXUAL ACTIVITY WITH RECIPIENT OF SERVICES PROHIBITED**

A person who owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services may not engage in a sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, with another person or

subject another person to sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, if the other person, not the actor's spouse, is a person with mental illness who receives therapeutic, residential or habilitative services from the organization, program or residence. [2003, c. 2, §102 (COR).]

#### SECTION HISTORY

1993, c. 687, §8 (NEW). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §102 (COR).

### **§3009. NONLAPSING FUNDS**

Any unencumbered balance of General Fund appropriations remaining at the end of each fiscal year in the Mental Health Services - Community Medicaid account may not lapse but must be carried forward to be used for the same purposes. [1995, c. 665, Pt. N, §1 (NEW).]

*§3009. Access to mental health services*

*(As enacted by PL 1995, c. 697, §1 is REALLOCATED TO TITLE 34-B, SECTION 3010)*

#### SECTION HISTORY

RR 1995, c. 2, §87 (RAL). 1995, c. 665, §N1 (NEW). 1995, c. 697, §1 (NEW).

### **§3010. ACCESS TO MENTAL HEALTH SERVICES**

*(REALLOCATED FROM TITLE 34-B, SECTION 3009)*

Any money that is identified as net General Fund savings through legislative actions or through departmental administrative actions due to the closure of or diminution of services at a state mental health institution or to lowered administrative costs within the department must be used to provide mental health services to persons in need of those services in other appropriate settings and programs, including, but not limited to, community-based mental health programs. For the purposes of this section, "net General Fund savings" means total savings in the General Fund projected to be available due to a series of specific actions less any cost or liability resulting from implementing those actions. [1995, c. 2, §87 (RAL).]

#### SECTION HISTORY

RR 1995, c. 2, §87 (RAL).

## **Subchapter 2: STATE MENTAL HEALTH INSTITUTES**

### **§3201. MAINTENANCE**

*(REPEALED)*

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 2005, c. 236, §2 (AMD). 2007, c. 539, Pt. N, §66 (RP).

### **§3202. SUPERINTENDENT**

*(REPEALED)*

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1989, c. 501, §BB4 (AMD). 1993, c. 410, §§CCC21,22 (AMD). 1995, c. 560, §K35 (AMD). 2005, c. 236, §§3,4 (REV). 2007, c. 539, Pt. N, §67 (RP).

## **Subchapter 3: COMMUNITY MENTAL HEALTH SERVICES HEADING: PL 1987, C. 349, §20 (RPR)**

## Article 1: GENERAL PROVISIONS HEADING: PL 1987, C. 349, §20 (RPR)

### §3601. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 580, §7 (RPR).]

**1. Agency.** "Agency" means a person, firm, association or corporation, but does not include the individual or corporate professional practice of one or more psychologists or psychiatrists.

[ 1983, c. 580, §7 (RPR) .]

**1-A. Case management services.** "Case management services" means those services which assist an individual in gaining access to and making effective use of the range of medical, psychological and other related services available to them.

[ 1987, c. 246, §3 (NEW) .]

**1-B. Long-term mentally ill.** "Long-term mentally ill" means persons who suffer certain mental or emotional disorders, such as organic brain syndrome, schizophrenia, recurrent depressive and manic-depressive disorders, paranoid and other psychoses, plus other disorders which may become chronic, that erode or prevent the capacities in relation to 3 or more of the primary aspects of daily life, such as personal hygiene and self-care, self-direction, interpersonal relationships, social transactions, learning, recreation and economic self-sufficiency. While these persons may be at risk of institutionalization, there is no requirement that these persons are or have been residents of institutions providing mental health services.

[ 1987, c. 246, §3 (NEW) .]

**2. Mental health services.** "Mental health services" means out-patient counseling, other psychological, psychiatric, diagnostic or therapeutic services and other allied services.

[ 1983, c. 580, §7 (RPR) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §7 (RPR). 1987, c. 246, §3 (AMD).

### §3602. PURPOSE

The purpose of this subchapter is to expand community mental health services, encourage participation in a program of community mental health services by persons in local communities, obtain better understanding of the need for those services and secure aid for programs of community mental health services by state aid and local financial support. [1983, c. 459, §7 (NEW).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).

### §3603. COMMISSIONER'S DUTIES

The commissioner shall promulgate rules, according to the Maine Administrative Procedure Act, Title 5, chapter 375, relating to the administration of the services authorized by this subchapter and to licensing under this subchapter. [1983, c. 459, §7 (NEW).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).

## §3604. COMMISSIONER'S POWERS

**1. Provision of services.** The commissioner may provide mental health services throughout the State and for that purpose may cooperate with other state agencies, municipalities, persons, unincorporated associations and nonstock corporations.

[ 1983, c. 459, §7 (NEW) . ]

**2. Funding sources.** The commissioner may receive and use for the purpose of this subchapter money appropriated by the State, grants by the Federal Government, gifts from individuals and gifts from any other sources.

[ 1983, c. 459, §7 (NEW) . ]

**3. Grants.** The commissioner may make grants of funds to any state or local governmental unit, or branch of a governmental unit, or to a person, unincorporated association or nonstock corporation, which applies for the funds, to be used in the conduct of its mental health services.

A. The programs administered by the person or entity shall provide for adequate standards of professional services in accordance with state statutes. [1983, c. 580, §8 (RPR) . ]

B. The commissioner may require the person or entity applying for funds to produce evidence that appropriate local, governmental and other funding sources have been sought to assist in the financing of its mental health services. [1983, c. 580, §8 (RPR) . ]

C. After negotiation with the person or entity applying for funds, the commissioner may execute a contract or agreement for the provision of mental health services which reflects the commitment by the person or entity of local, governmental and other funds to assist in the financing of its mental health services. [1983, c. 580, §8 (NEW) . ]

D. Beyond the commissioner's assuring through program monitoring and auditing activities that an equitable distribution of the funds committed by contract or agreement to assist in the financing of mental health services are actually provided, it shall be the prerogative of the person or entity providing services to apportion other nonstate funds in an appropriate manner in accordance with its priorities, service contracts and applicable provisions of law. [1983, c. 580, §8 (NEW) . ]

E. Any new contract must be awarded through a request-for-proposal procedure and any contract of \$500,000 per year or more that is renewed must be awarded through a request-for-proposal procedure at least every 8 years, except for the following.

(1) A renewal contract with a provider is not subject to the request-for-proposal procedure requirement if the contract granted under this subsection is performance based.

(2) Notwithstanding subparagraph (1), the department shall subject a contract to a request-for-proposal procedure when necessary to comply with paragraph G. [1997, c. 381, §2 (AMD) . ]

F. The commissioner shall establish a procedure to obtain assistance and advice from consumers of mental health services regarding the selection of contractors when requests for proposals are issued. [1991, c. 452, §1 (NEW) . ]

G. A contract under this subsection that is subject to renewal must be awarded through a request-for-proposal procedure if the department determines that:

(1) The provider has breached the existing contract;

(2) The provider has failed to correct deficiencies cited by the department;

(3) The provider is inefficient or ineffective in the delivery of services and is unable or unwilling to improve its performance within a reasonable time; or

(4) The provider can not or will not respond to a reconfiguration of service delivery requested by the department. [1993, c. 624, §2 (NEW).]

[ 1997, c. 381, §2 (AMD) .]

**4. Cooperative planning required; grant recipients and correctional authorities.** As a condition for receipt of state mental health funding, providers of community mental health services to persons with serious mental illness shall develop with state and local correctional authorities cooperative plans for the provision of services to those persons. These plans must include at least the following:

A. Procedures for timely referral of persons with serious mental illness to community-based mental health services; [1995, c. 431, §3 (NEW).]

B. Provision for the treatment and support of persons with serious mental illness in correctional facilities and commitment of funds within available resources; and [1995, c. 431, §3 (NEW).]

C. Procedures for referrals of individuals with serious mental illness to local providers of comprehensive mental health services following release from correctional facilities, including mechanisms for developing comprehensive treatment plans before the release from correctional facilities of persons with serious mental illness. [1995, c. 431, §3 (NEW).]

Providers of community mental health services and other public providers of comprehensive services to persons with serious mental illness that fail to participate in the development of plans to serve this population are not eligible for state funding for the provision of mental health services.

[ 1995, c. 431, §3 (NEW) .]

**5. Exclusion.** Beginning October 1, 1996, an entity that applies for the award or renewal of a grant or contract for the provision of mental health services must be a participating member of the community service network, as established in section 3608, for the region of the State subject to that grant or contract.

[ 2013, c. 132, §2 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §8 (AMD). 1991, c. 452, §1 (AMD). 1993, c. 624, §§1,2 (AMD). 1995, c. 431, §3 (AMD). 1995, c. 691, §6 (AMD). 1997, c. 381, §2 (AMD). 2007, c. 286, §5 (AMD). 2013, c. 132, §2 (AMD).

### §3605. GOVERNMENTAL AGENCIES

*(REPEALED)*

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 777, §1 (RP).

### §3606. LICENSES

*(REPEALED)*

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §9 (RPR). 1989, c. 227, §2 (RP).

### §3607. QUALITY IMPROVEMENT COUNCILS

*(REPEALED)*

#### SECTION HISTORY



1995, c. 691, §7 (NEW). 1997, c. 365, §§1,2 (AMD). 1997, c. 371, §§1-4 (AMD). 1997, c. 683, §B22 (AMD). 2005, c. 236, §§3,4 (REV). 2007, c. 286, §6 (RP).

## **§3607-A. INSTITUTE COUNCILS**

**(REPEALED)**

### SECTION HISTORY

2007, c. 286, §7 (NEW). 2013, c. 132, §3 (RP).

## **§3608. COMMUNITY SERVICE NETWORKS**

The department shall establish and oversee community service networks with the collective responsibility to coordinate and ensure continuity of care within the delivery of mental health services to adult mental health consumers under the authority of the department. A network consists of organizations providing mental health services funded by the General Fund or Medicaid in the corresponding area specified in subsection 1-A. The community service networks must be established and operated in accordance with standards adopted by the department to establish and operate networks. Departmental oversight includes, but is not limited to, establishing and overseeing protocols, quality assurance, writing and monitoring contracts for service, establishing outcome measures and ensuring that each network provides an integrated system of care. The department may adopt rules to carry out this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. This section may not be construed to supersede the authority of the department as the single state Medicaid agency under the Social Security Act, Title XII or to affect the professional standards and practices of nonnetwork providers. [2007, c. 286, §8 (AMD).]

### **1. Responsibilities.** Each network shall:

A. Ensure 24-hour access to a consumer's community support services records for better continuity of care during a psychiatric crisis; [2007, c. 286, §8 (AMD).]

B. Ensure continuity, accountability and coordination regarding service delivery; [1995, c. 691, §7 (NEW).]

C. Participate in collection of uniform data; [2007, c. 286, §8 (AMD).]

D. In conjunction with the department, conduct planning activities based on data and client outcomes; [2007, c. 286, §8 (AMD).]

E. Develop techniques for identifying and providing services to consumers at risk, based on the principle that services will be provided as close to the consumer's home as possible; [2007, c. 545, §1 (AMD).]

F. Enable, among other things, the sharing of confidential client information to the extent necessary to protect the client's health and safety when it is determined the client has an urgent need for mental health services. The network members shall share confidential client information, even without a client's consent, to the extent necessary to protect the client's health and safety in a period of urgent need for mental health services when the client lacks the capacity to give consent for the information sharing or when an exigency exists so that the client's health and safety is better protected if the information is shared without a delay to obtain consent. A person or entity participating in good faith in sharing information under this paragraph is immune from civil liability that might otherwise result from these actions, including, but not limited to, a civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information. The department shall adopt rules to identify the limits and requirements to be included in the memoranda. These rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and [2007, c. 545, §2 (AMD).]

G. Provide consolidated mental health crisis services for children and adults, beginning March 1, 2009, through a memorandum of understanding among providers of mental health services in the network that must include provisions to ensure coordination, eliminate duplication and provide a level of crisis services established by the department. [2007, c. 545, §3 (NEW).]

[2007, c. 545, §§1-3 (AMD).]

**1-A. Areas.** A community service network shall operate in each of the following geographic areas:

A. Aroostook County; [2007, c. 286, §8 (NEW).]

B. Hancock County, Washington County, Penobscot County and Piscataquis County; [2007, c. 286, §8 (NEW).]

C. Kennebec County and Somerset County; [2007, c. 286, §8 (NEW).]

D. Knox County, Lincoln County, Sagadahoc County and Waldo County; [2007, c. 286, §8 (NEW).]

E. Androscoggin County, Franklin County and Oxford County; [2007, c. 286, §8 (NEW).]

F. Cumberland County; and [2007, c. 286, §8 (NEW).]

G. York County. [2007, c. 286, §8 (NEW).]

[2007, c. 286, §8 (NEW).]

**2. Accountability.**

[2007, c. 286, §8 (RP).]

**3. Public outreach.**

[2007, c. 286, §8 (RP).]

**4. Participation.**

[2007, c. 286, §8 (RP).]

**5. Data collection.** The department shall collect data to assess the capacity of the community service networks, including, but not limited to, analyses of utilization of mental health services and the unmet needs of persons receiving publicly funded mental health services.

[2007, c. 286, §8 (AMD).]

#### SECTION HISTORY

1995, c. 691, §7 (NEW). 1997, c. 423, §§1,2 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 286, §8 (AMD). 2007, c. 545, §§1-3 (AMD).

### §3609. STATEWIDE QUALITY IMPROVEMENT COUNCIL

The commissioner shall designate persons to be members to serve on a statewide quality improvement council to advise the commissioner on issues of system implementation that have statewide impact. The commissioner shall appoint such other members to serve on the council as required by law. [2007, c. 286, §9 (AMD).]

#### SECTION HISTORY

1995, c. 691, §7 (NEW). 2007, c. 286, §9 (AMD).

## §3610. SAFETY NET SERVICES

The department is responsible for providing a safety net of adult mental health services for people with major mental illness who the department or its designee determines can not otherwise be served by the community service networks. The department may develop contracts to deliver safety net services if the department determines contracts to be appropriate and cost-effective. The state-operated safety net must include, but is not limited to: [ 2007, c. 286, §10 (AMD) . ]

### 0. (Repealed)

**1. Beds.** Backup emergency hospital beds for people requiring medical stabilization, assessment or treatment;

[ 1997, c. 683, Pt. A, §19 (RPR) . ]

**2. Treatment.** Intermediate and long-term treatment for people who need long-term structured care;

[ 1997, c. 683, Pt. A, §19 (RPR) . ]

**3. Forensic services.** Forensic services;

[ 1997, c. 683, Pt. A, §19 (RPR) . ]

**4. Intensive case management.** Intensive case management; and

[ 1997, c. 683, Pt. A, §19 (RPR) . ]

**5. Other services.** Other services determined by the commissioner to be needed.

[ 1997, c. 683, Pt. A, §19 (RPR) . ]

### SECTION HISTORY

1997, c. 423, §3 (NEW). 1997, c. 683, Pt. A, §19 (RPR). 2007, c. 286, §10 (AMD) .

## §3611. CONSUMER COUNCIL SYSTEM OF MAINE

In order to promote high-quality adult mental health services, the Consumer Council System of Maine, established in Title 5, section 12004-I, subsection 60-B and referred to in this section as "the council system," is established to provide an effective, independent consumer voice in an advisory capacity in the development of public policy and resource allocation. The council system consists of the Statewide Consumer Council established in subsection 6 and local councils. [ 2007, c. 592, §2 (NEW) . ]

**1. Independent public instrumentality.** The council system exists as an independent public instrumentality of the State to provide guidance and advice from consumers of adult mental health services provided or funded by the State regarding the delivery of effective and appropriate adult mental health services consistent with the State's comprehensive mental health services plan and to comply with the consent decree and incorporated settlement agreement in the case of Paul Bates, et al. v. Robert Glover, et al., Kennebec County Superior Court, Civil Action Docket No. CV-89-88 dated August 2, 1990.

[ 2007, c. 592, §2 (NEW) . ]

**2. Governmental functions; tort claims.** Exercise of the powers conferred by this section is the performance of an essential governmental function. The council system must be considered as within the definition of "State" for the purposes of Title 14, section 8102, subsection 4. The council system is not considered an agency of the State for the purposes of budgeting, accounts and control, auditing, contracting and purchasing.

[ 2007, c. 592, §2 (NEW) . ]

**3. Duties.** As pertains to the delivery of mental health services for adults, the council system shall:

A. Advise the department, the Governor and other state agencies. This duty includes advising the department on the review, analysis and evaluation of adult mental health programs, policies, procedures and service delivery systems administered or funded by the State and the hiring of personnel when appropriate; [ 2007, c. 592, §2 (NEW) . ]

B. Assist the department in program design and implementation, including assessment of the quality of services and delivery systems and prioritization of programming; [ 2007, c. 592, §2 (NEW) . ]

C. Provide consumers with a recognized mechanism for collaboration with State Government, including addressing issues with persons and entities that provide services through contracts with the department; [ 2007, c. 592, §2 (NEW) . ]

D. Provide input regarding programs, evaluation, public policy and resource allocation and address issues and concerns that arise at the local level; [ 2007, c. 592, §2 (NEW) . ]

E. Identify, research and respond to issues of importance to consumers, including requesting information and data to facilitate informed decision making; [ 2007, c. 592, §2 (NEW) . ]

F. Interact with state agencies, community entities and other organizations; [ 2007, c. 592, §2 (NEW) . ]

G. Provide budget requests to fund the council system to the department for each biennial budget and each supplemental budget; and [ 2007, c. 592, §2 (NEW) . ]

H. Make annual and interim recommendations to State Government and provide by May 31st of each year a report to the Governor and the Legislature. The report must include analysis of state programs, policies and procedures, legislative and regulatory proposals and recommendations for action by the State. [ 2007, c. 592, §2 (NEW) . ]

[ 2007, c. 592, §2 (NEW) . ]

**4. Powers.** The council system may:

A. Contract for staff assistance or hire employees, including an executive director or project manager and such other staff as necessary, to conduct the activities of and support the duties of the council system. Employees of the council system are not state employees; however, they are immune from civil liability for acts that they perform in good faith within the scope of their duties for the council system; [ 2007, c. 592, §2 (NEW) . ]

B. Reimburse members of the Statewide Consumer Council established in subsection 6 and local council members who are not otherwise fully reimbursed for expenses of participating in council system meetings from the council system budget in an amount up to the legislative per diem rate for participation in Statewide Consumer Council and local council meetings, plus reimbursement for reasonable and necessary expenses actually incurred, including but not limited to costs incurred for travel, child care for the member's child and substitute care for dependent adults. A standard statewide rate of reimbursement, including reduced reimbursement for a member entitled to partial reimbursement from any other source, must be approved by the Statewide Consumer Council. To the extent allowable under federal law, reimbursement under this paragraph may not be counted as income, resources or

assets for the purposes of determining eligibility for benefits under any state or municipal program of assistance or health coverage for which a council member may be eligible; [ 2007, c. 592, §2 (NEW) . ]

C. Engage in advocacy regarding legislative and regulatory initiatives; and [ 2007, c. 592, §2 (NEW) . ]

D. Provide interim reports to the Governor and the Legislature and respond to written responses from the department under subsection 5. [ 2007, c. 592, §2 (NEW) . ]

[ 2007, c. 592, §2 (NEW) . ]

**5. Written response.** No later than September 30th of each year, the commissioner shall provide a written response to the council system's annual report under subsection 3, paragraph H to the chair of the Statewide Consumer Council, the Governor and the Legislature. The response must:

A. Address the actions that the department plans to take or proposes to implement with regard to the recommendations contained in the council system's annual report and any interim reports or the reasons for declining to take or propose action; and [ 2007, c. 592, §2 (NEW) . ]

B. Include a report on progress in implementing actions detailed in prior department written reports under this subsection. [ 2007, c. 592, §2 (NEW) . ]

[ 2007, c. 592, §2 (NEW) . ]

**6. Statewide Consumer Council.** The provisions of this subsection govern the membership, duties and operation of the Statewide Consumer Council, as established in Title 5, section 12004-I, subsection 60-B.

A. The Statewide Consumer Council consists of 16 to 30 members who represent the local councils, described in subsection 7, after being elected at local council meetings on a schedule established by the Statewide Consumer Council. [ 2007, c. 592, §2 (NEW) . ]

B. Members of the Statewide Consumer Council shall annually elect a coordinating committee consisting of a chair, vice-chair, secretary and treasurer. Officers serve for terms of one year and are eligible for reelection. [ 2007, c. 592, §2 (NEW) . ]

C. The Statewide Consumer Council shall:

(1) Convene at least 4 regular meetings per year and special meetings as the Statewide Consumer Council determines necessary;

(2) Establish an application procedure by which the Statewide Consumer Council may recognize a local council;

(3) Determine the timing of and procedures for elections by local councils to elect representatives to the Statewide Consumer Council;

(4) Apportion the number of representatives each local council will have on the Statewide Consumer Council; and

(5) Adopt policies and procedures regarding removal for good cause of a Statewide Consumer Council member. [ 2007, c. 592, §2 (NEW) . ]

D. Meetings of the Statewide Consumer Council or such subcommittees as may be formed from the council membership may be held to perform the duties listed in subsection 3 and:

(1) To receive, review and distribute the recommendations of the local councils and prepare the council system's annual report and any interim reports;

(2) To develop a mechanism for communication with department personnel that ensures timely responses to issues and concerns identified by the council system and that provides a formal means of communication with the commissioner and high-level department personnel;

(3) To advise and engage in dialogue with the department concerning oversight, evaluation, unmet needs, quality assurance and quality improvement, design of new program initiatives and prioritization of programming; and

(4) To oversee and manage the council system, including assumption of responsibility for the development of local councils in unrepresented areas. [2007, c. 592, §2 (NEW).]

E. The Statewide Consumer Council shall adopt policies and procedures for the operation of the Statewide Consumer Council and the local councils. The policies must:

(1) Require that local councils file with the Statewide Consumer Council periodic reports and maintain records of meetings and business conducted, a list of members elected to the Statewide Consumer Council and leadership and financial records; and

(2) Require that the Statewide Consumer Council file with the department periodic reports and maintain records of meetings and business conducted, policies and procedures adopted and financial records as required by contract with the department. [2007, c. 592, §2 (NEW).]

[2007, c. 592, §2 (NEW).]

**7. Local councils.** The provisions of this subsection govern the membership, duties and operation of the local councils.

A. Each local council shall follow the policies and procedures for local councils adopted by the Statewide Consumer Council pursuant to subsection 6. [2007, c. 592, §2 (NEW).]

B. Each local council shall hold regular meetings, at least 4 per year and more if determined necessary by the local council, for the purpose of discussing and reviewing the delivery of adult mental health services to consumers and shall engage in other activities:

(1) To reach out to all persons in the surrounding community to encourage participation in the local council, to stimulate and receive local consumer advice and to gain awareness of local concerns, needs and ideas, including identifying concerns of persons who do not usually participate in the local council meetings;

(2) To advocate for and provide advice regarding local response to local issues;

(3) To advise the department, State Government and independent contractors on local responses to local issues through communication with the Statewide Consumer Council;

(4) To elect representatives to the Statewide Consumer Council; and

(5) To communicate with the Statewide Consumer Council via elected members and reports regarding issues of concern identified by the local council. [2007, c. 592, §2 (NEW).]

[2007, c. 592, §2 (NEW).]

**8. Funding.** Funding for the council system must be included as part of the Governor's proposed budget for the department. The council system may accept gifts, grants and other funds and contributions for use in performing the duties of the council system as long as such gifts, grants, funds and contributions are in accordance with state laws prohibiting conflicts of interest.

[2007, c. 592, §2 (NEW).]

**9. General provisions.** The provisions of this subsection apply to the council system.

A. A Statewide Consumer Council member or elected local council member may not cast a vote on any matter that would provide any direct or indirect financial benefit to that member or otherwise give the appearance of a conflict of interest under state law. [2007, c. 592, §2 (NEW).]

B. A person may not be excluded from the council system or discriminated against within the council system by reason of race, creed, color, gender, sexual orientation, age, marital status, homelessness, national origin, disability or status as a consumer of mental health services. [2007, c. 592, §2 (NEW).]

C. Meetings of the Statewide Consumer Council and local councils are public proceedings and their records are public records for the purposes of Title 1, chapter 13. [2007, c. 592, §2 (NEW).]

[2007, c. 592, §2 (NEW).]

#### SECTION HISTORY

2007, c. 592, §2 (NEW).

## §3612. MUNICIPAL NOTIFICATION

With regard to residential services for persons committed to the custody of the commissioner pursuant to Title 15, chapter 5, 120 days prior to the opening of a residential facility by the department or to signing a contract with a community agency to provide a community-based residential facility, the department shall provide the specific location and detailed information to the municipality in which the facility is to be located. The department shall review any response or site alternatives provided by municipal officials prior to the opening of the facility or signing of the contract. [2013, c. 357, §1 (NEW).]

#### SECTION HISTORY

2013, c. 357, §1 (NEW).

## Article 2: CRISIS INTERVENTION PROGRAM

### HEADING: PL 1987, C. 349, §21 (NEW)

## §3621. CRISIS INTERVENTION PROGRAM ESTABLISHED

The department shall establish the Crisis Intervention Program to serve Penobscot, Hancock, Piscataquis and Washington Counties. This shall be a community-based program to provide counseling, consultation, evaluation, treatment and referral, education and training services, delivered by a crisis intervention team. The program shall provide the following services: [1987, c. 349, Pt. H, §21 (NEW).]

**1. Emergency room services.** Crisis intervention and psychiatric emergency services based in a hospital emergency room;

[1987, c. 349, Pt. H, §21 (NEW).]

**2. Outreach services.** Outreach services and crisis intervention beyond the hospital setting; and

[1987, c. 349, Pt. H, §21 (NEW).]

**3. Telephone hot-line services.** A community-based telephone crisis intervention hot-line offering 24-hour, 7-days-a-week counseling, consultation, evaluation, treatment and referral services.

[1987, c. 349, Pt. H, §21 (NEW).]

#### SECTION HISTORY

1987, c. 349, §21 (NEW).

## §3622. CRISIS INTERVENTION TEAM

**1. Established.** A community-based crisis intervention team shall be established to provide crisis intervention on a 24-hour, 7-days-a-week basis to mentally ill people and to provide crisis intervention training for emergency room personnel.

[ 1987, c. 349, Pt. H, §21 (NEW) .]

**2. Qualifications.** The team shall be comprised of qualified mental health professionals with training and experience in assessment and intervention with mentally ill people in a crisis. In addition, the team members shall have a working knowledge of case management, the mental health system and area resources.

[ 1987, c. 349, Pt. H, §21 (NEW) .]

### SECTION HISTORY

1987, c. 349, §H21 (NEW) .

## §3623. REGION II CRISIS INTERVENTION PROGRAM ADVISORY BOARD

*(REPEALED)*

### SECTION HISTORY

1987, c. 349, §H21 (NEW). 1989, c. 163, (AMD). 1991, c. 824, §A70 (RP) .

## §3624. REGION III CRISIS INTERVENTION PROGRAM ADVISORY BOARD

*(REPEALED)*

### SECTION HISTORY

1993, c. 360, §A2 (NEW). 1995, c. 560, §K36 (AMD). 1999, c. 668, §125 (RP) .

## Subchapter 4: HOSPITALIZATION

### Article 1: GENERAL PROVISIONS

## §3801. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 459, §7 (NEW) .]

### **1. Hospital.**

[ 2007, c. 319, §1 (RP) .]

**1-A. Designated nonstate mental health institution.** "Designated nonstate mental health institution" means a nonstate mental health institution that is under contract with the department for receipt by the hospital of involuntary patients.

[ 1995, c. 496, §1 (NEW) .]

**1-B. Least restrictive form of transportation.** "Least restrictive form of transportation" means the vehicle used for transportation and any restraining devices that may be used during transportation that impose the least amount of restriction, taking into consideration the stigmatizing impact upon the individual being transported.

[ 1997, c. 422, §4 (NEW) .]



**2. Licensed physician.** "Licensed physician" means a person licensed under the laws of the State to practice medicine or osteopathy or a medical officer of the Federal Government while in this State in the performance of his official duties.

[ 1983, c. 459, §7 (NEW) . ]

**3. Licensed clinical psychologist.** "Licensed clinical psychologist" means a person licensed under the laws of the State as a psychologist and who practices clinical psychology.

[ 1983, c. 459, §7 (NEW) . ]

**4. Likelihood of serious harm.**

[ 2009, c. 651, §3 (RP) . ]

**4-A. Likelihood of serious harm.** "Likelihood of serious harm" means:

A. A substantial risk of physical harm to the person as manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm; [ 2009, c. 651, §4 (NEW) . ]

B. A substantial risk of physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct placing others in reasonable fear of serious physical harm; [ 2009, c. 651, §4 (NEW) . ]

C. A reasonable certainty that the person will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the person adequately from impairment or injury; or [ 2009, c. 651, §4 (NEW) . ]

D. For the purposes of section 3873-A, in view of the person's treatment history, current behavior and inability to make an informed decision, a reasonable likelihood that the person's mental health will deteriorate and that the person will in the foreseeable future pose a likelihood of serious harm as defined in paragraphs A, B or C. [ 2009, c. 651, §4 (NEW) . ]

[ 2009, c. 651, §4 (NEW) . ]

**4-B. Medical practitioner.** "Medical practitioner" or "practitioner" means a licensed physician, registered physician assistant, certified psychiatric clinical nurse specialist, certified nurse practitioner or licensed clinical psychologist.

[ 2009, c. 651, §5 (NEW) . ]

**5. Mentally ill person.** "Mentally ill person" means a person having a psychiatric or other disease that substantially impairs that person's mental health or creates a substantial risk of suicide. "Mentally ill person" includes persons suffering effects from the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol. A person with developmental disabilities or a person diagnosed as a sociopath is not for those reasons alone a mentally ill person.

[ 2009, c. 651, §6 (AMD) . ]

**6. Nonstate mental health institution.** "Nonstate mental health institution" means a public institution, a private institution or a mental health center, which is administered by an entity other than the State and which is equipped to provide inpatient care and treatment for the mentally ill.

[ 1983, c. 459, §7 (NEW) . ]

**7. Patient.** "Patient" means a person under observation, care or treatment in a psychiatric hospital or residential care facility pursuant to this subchapter, a person receiving services from an assertive community treatment team, a person receiving intensive mental health management services from the department or a person being evaluated for emergency admission under section 3863 in a hospital emergency department.

[ 2009, c. 651, §7 (AMD) .]

**7-A. Progressive treatment program.** "Progressive treatment program" or "program" means a program of court-ordered services provided to participants under section 3873-A.

[ 2009, c. 651, §8 (AMD) .]

**7-B. Psychiatric hospital.** "Psychiatric hospital" means:

A. A state mental health institute; [ 2009, c. 651, §9 (AMD) .]

B. A nonstate mental health institution; or [ 2009, c. 651, §9 (AMD) .]

C. A designated nonstate mental health institution. [ 2009, c. 651, §9 (NEW) .]

[ 2009, c. 651, §9 (AMD) .]

**8. Residential care facility.** "Residential care facility" means a licensed or approved boarding care, nursing care or foster care facility which supplies supportive residential care to individuals due to their mental illness.

[ 1983, c. 459, §7 (NEW) .]

**8-A. Severe and persistent mental illness.** "Severe and persistent mental illness" means a diagnosis of one or more qualifying mental illnesses or disorders plus a listed disability or functional impairment that has persisted continuously or intermittently or is expected to persist for at least one year as a result of that disease or disorder. The qualifying mental illnesses or disorders are schizophrenia, schizoaffective disorder or other psychotic disorder, major depressive disorder, bipolar disorder or a combination of mental disorders sufficiently disabling to meet the criteria of functional disability. The listed disabilities or functional impairments, which must result from a diagnosed qualifying mental illness or disorder, include inability to adequately manage one's own finances, inability to perform activities of daily living and inability to behave in ways that do not bring the attention of law enforcement for dangerous acts or for acts that manifest the person's inability to protect the person from harm.

[ 2005, c. 519, Pt. BBBB, §3 (NEW); 2005, c. 519, Pt. BBBB, §20 (AFF) .]

**9. State mental health institute.** "State mental health institute" means the Riverview Psychiatric Center or the Dorothea Dix Psychiatric Center.

[ 1983, c. 459, §7 (NEW); 2005, c. 236, §§3, 4 (REV) .]

**10. Inability to make an informed decision.** "Inability to make an informed decision" means being unable to make a responsible decision whether to accept or refuse a recommended treatment as a result of lack of mental capacity to understand sufficiently the benefits and risks of the treatment after a thorough and informative explanation has been given by a qualified mental health professional.

[ 2005, c. 519, Pt. BBBB, §3 (NEW); 2005, c. 519, Pt. BBBB, §20 (AFF) .]

**11. Assertive community treatment.** "Assertive community treatment" or "ACT" means a self-contained service with a fixed point of responsibility for providing treatment, rehabilitation and support services to persons with mental illness for whom other community-based treatment approaches have been unsuccessful. Assertive community treatment uses clinical and rehabilitative staff to address symptom

stability; relapse prevention; maintenance of safe, affordable housing in normative settings that promote well-being; establishment of natural support networks to combat isolation and withdrawal; the minimizing of involvement with the criminal justice system; individual recovery education; and services to enable the person to function at a work site. Assertive community treatment is provided by multidisciplinary teams who are on duty 24 hours per day, 7 days per week; teams must include a psychiatrist, registered nurse, certified rehabilitation counselor or certified employment specialist, a peer recovery specialist and a substance abuse counselor and may include an occupational therapist, community-based mental health rehabilitation technician, psychologist, licensed clinical social worker or licensed clinical professional counselor. An ACT team member who is a state employee is, while in good faith performing a function as a member of an ACT team, performing a discretionary function within the meaning of Title 14, section 8104-B, subsection 3.

[ 2005, c. 519, Pt. BBBB, §3 (NEW); 2005, c. 519, Pt. BBBB, §20 (AFF) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 496, §1 (AMD). 1997, c. 422, §4 (AMD). 2005, c. 236, §§3,4 (REV). 2005, c. 519, §§BBBB1-3 (AMD). 2005, c. 519, §§BBBB20 (AFF). 2007, c. 319, §§1-3 (AMD). 2009, c. 651, §§3-9 (AMD).

### §3802. COMMISSIONER'S POWERS

The commissioner may: [1983, c. 459, §7 (NEW) .]

**1. Rules.** Promulgate such rules, not inconsistent with this subchapter, as he may find to be reasonably necessary for proper and efficient hospitalization of the mentally ill;

[ 1983, c. 459, §7 (NEW) .]

**2. Investigation.** Investigate, by personal visit, complaints made by any patient or by any person on behalf of a patient;

[ 1983, c. 459, §7 (NEW) .]

**3. Visitation.** Visit each psychiatric hospital or residential care facility regularly to review the commitment procedures of all new patients admitted between visits and visit other hospitals as necessary to review protocols and procedures related to certification of patients under section 3863;

[ 2007, c. 319, §4 (AMD) .]

**4. Reports.** Require reports from the chief administrative officer of any hospital or residential care facility relating to the admission, examination, diagnosis, release or discharge of any patient; and

[ 1983, c. 459, §7 (NEW) .]

**5. Forms.** Prescribe the form of applications, records, reports and medical certificates provided for under this subchapter and prescribe the information required to be contained in them.

[ 1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 2007, c. 319, §4 (AMD).

### §3803. PATIENT'S RIGHTS

A patient in a psychiatric hospital or residential care facility under this subchapter has the following rights. [2007, c. 319, §5 (AMD) .]

**1. Civil rights.** Every patient is entitled to exercise all civil rights, including, but not limited to, the right to civil service status, the right to vote, rights relating to the granting, renewal, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, the right to enter into contractual relationships and the right to manage the patient's property, unless:

A. The chief administrative officer of the psychiatric hospital or residential care facility determines that it is necessary for the medical welfare of the patient to impose restrictions on the exercise of these rights and, if restrictions are imposed, the restrictions and the reasons for them must be made a part of the clinical record of the patient; [ 2007, c. 319, §5 (AMD) . ]

B. A patient has been adjudicated incompetent and has not been restored to legal capacity; or [ 1983, c. 459, §7 (NEW) . ]

C. The exercise of these rights is specifically restricted by other statute or rule, but not solely because of the fact of admission to a psychiatric hospital or residential care facility. [ 2007, c. 319, §5 (AMD) . ]

[ 2007, c. 319, §5 (AMD) . ]

**2. Humane care and treatment.** Every patient is entitled to humane care and treatment and, to the extent that facilities, equipment and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice.

[ 1983, c. 459, §7 (NEW) . ]

**3. Restraints and seclusion.** Restraint, including any mechanical means of restricting movement, and seclusion, including isolation by means of doors that cannot be opened by the patient, may not be used on a patient, unless the chief administrative officer of the psychiatric hospital or residential care facility or the chief administrative officer's designee determines that either is required by the medical needs of the patient.

A. The chief administrative officer of the psychiatric hospital or facility shall record and make available for inspection every use of mechanical restraint or seclusion and the reasons for its use. [ 2007, c. 319, §5 (AMD) . ]

B. The limitation of the use of seclusion in this section does not apply to maximum security installations. [ 1983, c. 459, §7 (NEW) . ]

[ 2007, c. 319, §5 (AMD) . ]

**4. Communication.** Patient communication rights are as follows.

A. Every patient is entitled to communicate by sealed envelopes with the department, a member of the clergy of the patient's choice, the patient's attorney and the court that ordered the patient's hospitalization, if any. [ 2007, c. 319, §5 (AMD) . ]

B. Every patient is entitled to communicate by mail in accordance with the rules of the psychiatric hospital. [ 2007, c. 319, §5 (AMD) . ]

[ 2007, c. 319, §5 (AMD) . ]

**5. Visitors.** Every patient is entitled to receive visitors unless definitely contraindicated by the patient's medical condition, except that the patient may be visited by a member of the clergy of the patient's choice or the patient's attorney at any reasonable time.

[ 2007, c. 319, §5 (AMD) . ]

**6. Sterilization.** A patient may not be sterilized except in accordance with chapter 7.

[ 1983, c. 459, §7 (NEW) . ]

SECTION HISTORY

1983, c. 459, §7 (NEW). 2007, c. 319, §5 (AMD).

## §3804. HABEAS CORPUS

Any person detained pursuant to this subchapter is entitled to the writ of habeas corpus, upon proper petition by himself or by a friend to any justice generally empowered to issue the writ of habeas corpus in the county in which the person is detained. [1983, c. 459, §7 (NEW) . ]

SECTION HISTORY

1983, c. 459, §7 (NEW) .

## §3805. PROHIBITED ACTS; PENALTY

**1. Unwarranted hospitalization.** A person is guilty of causing unwarranted hospitalization, if he willfully causes the unwarranted hospitalization of any person under this subchapter.

[ 1983, c. 459, §7 (NEW) . ]

**2. Denial of rights.** A person is guilty of causing a denial of rights if he willfully causes the denial to any person of any of the rights accorded to him by this subchapter.

[ 1983, c. 459, §7 (NEW) . ]

**3. Penalty.** Causing unwarranted hospitalization or causing a denial of rights is a Class C crime.

[ 1983, c. 459, §7 (NEW) . ]

SECTION HISTORY

1983, c. 459, §7 (NEW) .

## Article 2: VOLUNTARY HOSPITALIZATION

### §3831. ADMISSION

A psychiatric hospital may admit on an informal voluntary basis for care and treatment of a mental illness any person desiring admission or the adult ward of a legally appointed guardian, subject to the following conditions. [2007, c. 319, §6 (AMD) . ]

**1. Availability of accommodations.** Except in cases of medical emergency, voluntary admission is subject to the availability of suitable accommodations.

[ 1983, c. 459, §7 (NEW) . ]

**2. Standard hospital information.** Standard hospital information may be elicited from the person if, after examination, the chief administrative officer of the psychiatric hospital determines the person suitable for admission, care and treatment.

[ 2007, c. 319, §6 (AMD) . ]

**3. Persons under 18 years of age.** Any person under 18 years of age must have the consent of the person's parent or guardian.

[ 2007, c. 319, §6 (AMD) .]

**4. State mental health institute.** Any person under 18 years of age must have the consent of the commissioner for admission to a state mental health institute.

[ 1983, c. 459, §7 (NEW) .]

**5. Adults under guardianship.** An adult ward may be admitted on an informal voluntary basis only if the adult ward's legally appointed guardian consents to the admission and the ward makes no objection to the admission.

[ 2007, c. 319, §6 (AMD) .]

**6. Adults with advance health care directives.** An adult with an advance health care directive authorizing psychiatric hospital treatment may be admitted on an informal voluntary basis if the conditions specified in the advance health care directive for the directive to be effective are met in accordance with the method stated in the advance health care directive or, if no such method is stated, as determined by a physician or a psychologist. If no conditions are specified in the advance health care directive as to how the directive becomes effective, the person may be admitted on an informal voluntary basis if the person has been determined to be incapacitated pursuant to Title 18-A, Article 5, Part 8. A person may be admitted only if the person does not at the time object to the admission or, if the person does object, if the person has directed in the advance health care directive that admission to the psychiatric hospital may occur despite that person's objections. The duration of the stay in the psychiatric hospital of a person under this subsection may not exceed 5 working days. If at the end of that time the chief administrative officer of the psychiatric hospital recommends further hospitalization of the person, the chief administrative officer shall proceed in accordance with section 3863, subsection 5-A.

This subsection does not create an affirmative obligation of a psychiatric hospital to admit a person consistent with the person's advance health care directive. This subsection does not create an affirmative obligation on the part of the psychiatric hospital or treatment provider to provide the treatment consented to in the person's advance health care directive if the physician or psychologist evaluating or treating the person or the chief administrative officer of the psychiatric hospital determines that the treatment is not in the best interest of the person.

[ 2009, c. 651, §10 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 415, §§1,2 (AMD). 1999, c. 423, §3 (AMD). 2007, c. 319, §6 (AMD). 2009, c. 651, §10 (AMD).

## §3832. FREEDOM TO LEAVE

**1. Patient's right.** A patient admitted under section 3831 is free to leave the psychiatric hospital at any time after admission within 16 hours of the patient's request unless application for admission of the person under section 3863 is initiated within that time.

[ 2007, c. 319, §7 (AMD) .]

**2. Notice.** The chief administrative officer of the psychiatric hospital shall cause every patient admitted under section 3831 to be informed, at the time of admission, of:

A. The patient's status as an informally admitted patient; and [ 2007, c. 319, §7 (AMD) .]

B. The patient's freedom to leave the psychiatric hospital under this section. [2007, c. 319, §7 (AMD).]

[2007, c. 319, §7 (AMD).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §10 (AMD). 2005, c. 519, §BBBB4 (AMD). 2005, c. 519, §BBBB20 (AFF). 2007, c. 319, §7 (AMD).

### Article 3: INVOLUNTARY HOSPITALIZATION

#### §3861. RECEPTION OF INVOLUNTARY PATIENTS

**1. Nonstate mental health institution.** The chief administrative officer of a nonstate mental health institution may receive for observation, diagnosis, care and treatment in the institution any person whose admission is applied for under any of the procedures in this subchapter. An admission may be made under the provisions of section 3863 only if the certifying examination conducted pursuant to section 3863, subsection 2 was completed no more than 2 days before the date of admission.

A. The institution, any person contracting with the institution and any of its employees when admitting, treating or discharging a patient under the provisions of sections 3863 and 3864 under a contract with the department, for purposes of civil liability, must be deemed to be a governmental entity or an employee of a governmental entity under the Maine Tort Claims Act, Title 14, chapter 741. [1989, c. 906, (NEW).]

B. Patients with a diagnosis of mental illness or psychiatric disorder in nonstate mental health institutions that contract with the department under this subsection are entitled to the same rights and remedies as patients in state mental health institutes as conferred by the constitution, laws, regulations and rules of this State and of the United States. [1989, c. 906, (NEW).]

C. Before contracting with and approving the admission of involuntary patients to a nonstate mental health institution, the department shall require the institution to:

- (1) Comply with all applicable regulations;
- (2) Demonstrate the ability of the institution to comply with judicial decrees as those decrees relate to services already being provided by the institution; and
- (3) Coordinate and integrate care with other community-based services. [1989, c. 906, (NEW).]

D. Beginning July 31, 1990, the capital, licensing, remodeling, training and recruitment costs associated with the start-up of beds designated for involuntary patients under this section must be reimbursed, within existing resources, of the Department of Health and Human Services. [1989, c. 906, (NEW); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

E. The chief administrative officer of a nonstate mental health institution shall provide notice to the department and such additional information as may be requested by the department when a person who was involuntarily admitted to the institution has died, attempted suicide or sustained a serious injury resulting in significant impairment of physical condition. For the purposes of this paragraph, "significant impairment" includes serious injuries resulting from burns, lacerations, bone fractures, substantial hematoma and injuries to internal organs whether self-inflicted or inflicted by another person. The notice must be provided within 24 hours of occurrence and must include the name of the person; the name, address and telephone number of that person's legal guardian, conservator or legal representative and parents if that person is a minor; a detailed description of the occurrence and any

injuries or impairments sustained; the date and time of the occurrence; the name, street address and telephone number of the facility; and the name and job title of the person providing the notice. [ 2007 , c. 89 , §2 (NEW) . ]

[ 2007 , c. 89 , §2 (AMD) . ]

**2. State mental health institute.** The chief administrative officer of a state mental health institute:

A. May receive for observation, diagnosis, care and treatment in the state mental health institute any person whose admission is applied for under section 3831 or 3863 if the certifying examination conducted pursuant to section 3863, subsection 2 was completed no more than 2 days before the date of admission; and [ 2007 , c. 319 , §8 (AMD) . ]

B. May receive for observation, diagnosis, care and treatment in the state mental health institute any person whose admission is applied for under section 3864 or is ordered by a court. [ 2007 , c. 319 , §8 (AMD) . ]

Any business entity contracting with the department for psychiatric physician services or any person contracting with a state mental health institute or the department to provide services pertaining to the admission, treatment or discharge of patients under sections 3863 and 3864 within a state mental health institute or any person contracting with a business entity to provide those services within a state mental health institute is deemed to be a governmental entity or an employee of a governmental entity for purposes of civil liability under the Maine Tort Claims Act, Title 14, chapter 741, with respect to the admission, treatment or discharge of patients within a state mental health institute under sections 3863 and 3864.

[ 2007 , c. 319 , §8 (AMD) . ]

**3. Involuntary treatment.** Except for involuntary treatment ordered pursuant to the provisions of section 3864, subsection 7-A, involuntary treatment of a patient at a designated nonstate mental health institution or a state mental health institute who is an involuntarily committed patient under the provisions of this subchapter may be ordered and administered only in conformance with the provisions of this subsection. For the purposes of this subsection, involuntary treatment is limited to medication for the treatment of mental illness and laboratory testing and medication for the monitoring and management of side effects.

A. If the patient's primary treating physician proposes a treatment that the physician, in the exercise of professional judgment, believes is in the best interest of the patient and if the patient lacks clinical capacity to give informed consent to the proposed treatment and the patient is unwilling or unable to comply with the proposed treatment, the patient's primary treating physician shall request in writing a clinical review of the proposed treatment by a clinical review panel. For a patient at a state mental health institute, the request must be made to the superintendent of the institute or the designee of the superintendent. For a patient at a designated nonstate mental health institution, the request must be made to the chief administrative officer or the designee of the chief administrative officer. The request must include the following information:

- (1) The name of the patient, the patient's diagnosis and the unit on which the patient is hospitalized;
- (2) The date that the patient was committed to the institution or institute and the period of the court-ordered commitment;
- (3) A statement by the primary treating physician that the patient lacks capacity to give informed consent to the proposed treatment. The statement must include documentation of a 2nd opinion that the patient lacks that capacity, given by a professional qualified to issue such an opinion who does not provide direct care to the patient but who may work for the institute or institution;
- (4) A description of the proposed course of treatment, including specific medications, routes of administration and dose ranges, proposed alternative medications or routes of administration, if any, and the circumstances under which any proposed alternative would be used;



- (5) A description of how the proposed treatment will benefit the patient and ameliorate identified signs and symptoms of the patient's psychiatric illness;
- (6) A listing of the known or anticipated risks and side effects of the proposed treatment and how the prescribing physician will monitor, manage and minimize the risks and side effects;
- (7) Documentation of consideration of any underlying medical condition of the patient that contraindicates the proposed treatment; and
- (8) Documentation of consideration of any advance health-care directive given in accordance with Title 18-A, section 5-802 and any declaration regarding medical treatment of psychotic disorders executed in accordance with section 11001. [ 2007 , c . 580 , §2 (NEW) . ]

B. The provisions of this paragraph apply to the appointment, duties and procedures of the clinical review panel under paragraph A.

(1) Within one business day of receiving a request under paragraph A, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall appoint a clinical review panel of 2 or more licensed professional staff who do not provide direct care to the patient. At least one person must be a professional licensed to prescribe medication relevant to the patient's care and treatment. At the time of appointment of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall notify the following persons in writing that the clinical review panel will be convened:

- (a) The primary treating physician;
- (b) The commissioner or the commissioner's designee;
- (c) The patient's designated representative or attorney, if any;
- (d) The State's designated federal protection and advocacy agency; and
- (e) The patient. Notice to the patient must inform the patient that the clinical review panel will be convened and of the right to assistance from a lay advisor, at no expense to the patient, and the right to obtain an attorney at the patient's expense. The notice must include contact information for requesting assistance from a lay advisor, who may be employed by the institute or institution, and access to a telephone to contact a lay advisor must be provided to the patient.

(2) Within 4 days of receiving a request under paragraph A and no less than 24 hours before the meeting of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall provide notice of the date, time and location of the meeting to the patient's primary treating physician, the patient and any lay advisor or attorney.

(3) The clinical review panel shall hold the meeting and any additional meetings as necessary, reach a final determination and render a written decision ordering or denying involuntary treatment.

- (a) At the meeting, the clinical review panel shall receive information relevant to the determination of the patient's capacity to give informed consent to treatment and the need for treatment, review relevant portions of the patient's medical records, consult with the physician requesting the treatment, review with the patient that patient's reasons for refusing treatment, provide the patient and any lay advisor or attorney an opportunity to ask questions of anyone presenting information to the clinical review panel at the meeting and determine whether the requirements for ordering involuntary treatment have been met.
- (b) All meetings of the clinical review panel must be open to the patient and any lay advisor or attorney, except that any meetings held for the purposes of deliberating, making findings and reaching final conclusions are confidential and not open to the patient and any lay advisor or attorney.

(c) The clinical review panel shall conduct its review in a manner that is consistent with the patient's rights.

(d) Involuntary treatment may not be approved and ordered if the patient affirmatively demonstrates to the clinical review panel that if that patient possessed capacity, the patient would have refused the treatment on religious grounds or on the basis of other previously expressed convictions or beliefs.

(4) The clinical review panel may approve a request for involuntary treatment and order the treatment if the clinical review panel finds, at a minimum:

(a) That the patient lacks the capacity to make an informed decision regarding treatment;

(b) That the patient is unable or unwilling to comply with the proposed treatment;

(c) That the need for the treatment outweighs the risks and side effects; and

(d) That the proposed treatment is the least intrusive appropriate treatment option.

(5) The clinical review panel may make additional findings, including but not limited to findings that:

(a) Failure to treat the illness is likely to produce lasting or irreparable harm to the patient; or

(b) Without the proposed treatment the patient's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the patient to pose a likelihood of serious harm.

(6) The clinical review panel shall document its findings and conclusions, including whether the potential benefits of the proposed treatment outweigh the potential risks. [2011, c. 657, Pt. DD, §1 (AMD).]

C. The provisions of this paragraph govern the rights of a patient who is the subject of a clinical review panel under paragraph A.

(1) The patient is entitled to the assistance of a lay advisor without expense to the patient. The patient is entitled to representation by an attorney at the patient's expense.

(2) The patient may review any records or documents considered by the clinical review panel.

(3) The patient may provide information orally and in writing to the clinical review panel and may present witnesses.

(4) The patient may ask questions of any person who provides information to the clinical review panel.

(5) The patient and any lay advisor or attorney may attend all meetings of the clinical review panel except for any private meetings authorized under paragraph B, subparagraph 3, division (b). [2007, c. 580, §2 (NEW).]

D. If the clinical review panel under paragraph A approves the request for involuntary treatment, the clinical review panel shall enter an order for the treatment in the patient's medical records and immediately notify the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution. The order takes effect:

(1) For a patient at a state mental health institute, one business day from the date of entry of the order; or

(2) For a patient at a designated nonstate mental health institution, one business day from the date of entry of the order, except that if the patient has requested review of the order by the commissioner under paragraph F, subparagraph (2), the order takes effect one business day from the day on which the commissioner or the commissioner's designee issues a written decision. [2011, c. 657, Pt. DD, §2 (AMD).]

E. The order for treatment under this subsection remains in effect for 120 days or until the end of the period of commitment, whichever is sooner, unless altered by:

- (1) An agreement to a different course of treatment by the primary treating physician and patient;
- (2) For a patient at a designated nonstate mental health institution, modification or vacation of the order by the commissioner or the commissioner's designee; or
- (3) An alteration or stay of the order entered by the Superior Court after reviewing the entry of the order by the clinical review panel on appeal under paragraph F. [2011, c. 657, Pt. DD, §3 (AMD).]

F. The provisions of this paragraph apply to the review and appeal of an order of the clinical review panel entered under paragraph B.

- (1) The order of the clinical review panel at a state mental health institute is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.
- (2) The order of the clinical review panel at a designated nonstate mental health institution may be reviewed by the commissioner or the commissioner's designee upon receipt of a written request from the patient submitted no later than one day after the patient receives the order of the clinical review panel. Within 3 business days of receipt of the request for review, the commissioner or the commissioner's designee shall review the full clinical review panel record and issue a written decision. The decision of the commissioner or the commissioner's designee may affirm the order, modify the order or vacate the order. The decision of the commissioner or the commissioner's designee takes effect one business day after the commissioner or the commissioner's designee issues a written decision. The decision of the commissioner or the commissioner's designee is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure. [2011, c. 657, Pt. DD, §4 (AMD).]

[ 2011, c. 657, Pt. DD, §§1-4 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1989, c. 906, (AMD). RR 1993, c. 2, §36 (COR). 1993, c. 336, §1 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 1997, c. 154, §1 (AMD). 1997, c. 422, §5 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 89, §2 (AMD). 2007, c. 319, §8 (AMD). 2007, c. 580, §2 (AMD). 2007, c. 695, Pt. M, §1 (AMD). 2011, c. 657, Pt. DD, §§1-4 (AMD).

### §3861-A. NOTIFICATION OF HOSPITALIZATION

When a person who is hospitalized in a psychiatric hospital under the provisions of this chapter is sentenced to serve a straight term of imprisonment or a split sentence in a county jail, the chief administrative officer of the hospital shall notify the sheriff of the county jail so that, in accordance with the provisions of Title 15, section 2211-A, the sheriff may process the person to serve the sentence while hospitalized and the person may remain in the hospital until ready for discharge. [2009, c. 281, §2 (NEW).]

#### SECTION HISTORY

2009, c. 281, §2 (NEW).

## §3862. PROTECTIVE CUSTODY

**1. Law enforcement officer's power.** If a law enforcement officer has probable cause to believe that a person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons, or if a law enforcement officer knows that a person has an advance health care directive authorizing mental health treatment and the officer has probable cause to believe that the person lacks capacity, the law enforcement officer:

A. May take the person into protective custody; and [1983, c. 459, §7 (NEW) .]

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination by a medical practitioner as provided in section 3863 or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in Title 18-A, section 5-802, subsection (d) to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective. [2009, c. 651, §11 (AMD) .]

When formulating probable cause, the law enforcement officer may rely upon information provided by a 3rd-party informant if the officer confirms that the informant has reason to believe, based upon the informant's recent personal observations of or conversations with a person, that the person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons.

[ 2009, c. 651, §11 (AMD) .]

### **1-A. Law enforcement officer's power.**

[ 1995, c. 62, §2 (RP) .]

**2. Certificate not executed.** If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under section 3863, and, for a person who has an advance health care directive authorizing mental health treatment, if the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have not been met or, in the absence of stated conditions, that the person does not lack capacity, the officer shall:

A. Release the person from protective custody and, with the person's permission, return the person forthwith to the person's place of residence, if within the territorial jurisdiction of the officer; [1999, c. 423, §4 (AMD) .]

B. Release the person from protective custody and, with the person's permission, return the person forthwith to the place where the person was taken into protective custody; or [1999, c. 423, §4 (AMD) .]

C. If the person is also under arrest for a violation of law, retain the person in custody until the person is released in accordance with the law. [1999, c. 423, §4 (AMD) .]

[ 1999, c. 423, §4 (AMD) .]

**3. Certificate executed.** If the certificate is executed by the examiner under section 3863, the officer shall undertake forthwith to secure the endorsement of a judicial officer under section 3863 and may detain the person for a period of time not to exceed 18 hours as may be necessary to obtain that endorsement.

[ 2009, c. 651, §12 (AMD) .]

**3-A. Advance health care directive effect.** If the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have been met or, in the absence of stated conditions, that the person lacks capacity, the person may be treated in accordance with the terms of the advance health care directive.

[ 1999, c. 423, §4 (NEW) . ]

**4. Transportation costs.** The costs of transportation under this section must be paid in the manner provided under section 3863. Any person transporting an individual to a hospital under the circumstances described in this section shall use the least restrictive form of transportation available that meets the security needs of the situation.

[ 1997, c. 422, §7 (AMD) . ]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 596, §§1,2 (AMD). 1993, c. 596, §4 (AFF). 1995, c. 62, §§1,2 (AMD). 1997, c. 422, §§6,7 (AMD). 1997, c. 438, §1 (AMD). 1997, c. 683, §A20 (AMD). 1999, c. 423, §4 (AMD). 2007, c. 178, §1 (AMD). 2009, c. 651, §§11, 12 (AMD).

### §3863. EMERGENCY PROCEDURE

A person may be admitted to a psychiatric hospital on an emergency basis according to the following procedures. [2007, c. 319, §9 (AMD).]

**1. Application.** Any health officer, law enforcement officer or other person may apply to admit a person to a psychiatric hospital, subject to the prohibitions and penalties of section 3805, stating:

A. The applicant's belief that the person is mentally ill and, because of the person's illness, poses a likelihood of serious harm; and [2009, c. 651, §13 (AMD).]

B. The grounds for this belief. [1983, c. 459, §7 (NEW).]

[ 2009, c. 651, §13 (AMD) . ]

**2. Certifying examination.** The written application must be accompanied by a dated certificate, signed by a medical practitioner stating:

A. That the practitioner has examined the person on the date of the certificate; [2009, c. 651, §14 (AMD).]

B. That the medical practitioner is of the opinion that the person is mentally ill and, because of that illness, poses a likelihood of serious harm. The written certificate must include a description of the grounds for that opinion; [2009, c. 651, §14 (AMD).]

C. That adequate community resources are unavailable for care and treatment of the person's mental illness; and [2009, c. 651, §14 (NEW).]

D. The grounds for the practitioner's opinion, which may be based on personal observation or on history and information from other sources considered reliable by the examiner. [2009, c. 651, §14 (NEW).]

[ 2009, c. 651, §14 (AMD) . ]

**2-A. Custody agreement.** A state, county or municipal law enforcement agency may meet with representatives of those public and private health practitioners and health care facilities that are willing and qualified to perform the certifying examination required by this section in order to attempt to work out a procedure for the custody of the person who is to be examined while that person is waiting for that

examination. Any agreement must be written and signed by and filed with all participating parties. In the event of failure to work out an agreement that is satisfactory to all participating parties, the procedures of section 3862 and this section continue to apply.

As part of an agreement the law enforcement officer requesting certification may transfer protective custody of the person for whom the certification is requested to another law enforcement officer, a health officer if that officer agrees or the chief administrative officer of a public or private health practitioner or health facility or the chief administrative officer's designee. Any arrangement of this sort must be part of the written agreement between the law enforcement agency and the health practitioner or health care facility. In the event of a transfer, the law enforcement officer seeking the transfer shall provide the written application required by this section.

A person with mental illness may not be detained or confined in any jail or local correctional or detention facility, whether pursuant to the procedures described in section 3862, pursuant to a custody agreement or under any other circumstances, unless that person is being lawfully detained in relation to or is serving a sentence for commission of a crime.

[ 2007, c. 319, §9 (AMD) .]

**3. Judicial review.** The application and accompanying certificate must be reviewed by a Justice of the Superior Court, Judge of the District Court, Judge of Probate or a justice of the peace, who may review the original application and accompanying certificate or a facsimile transmission of them.

A. If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, the judge or justice shall endorse them and promptly send them to the admitting psychiatric hospital. For purposes of carrying out the provisions of this section, an endorsement transmitted by facsimile machine has the same legal effect and validity as the original endorsement signed by the judge or justice. [ 2007, c. 319, §9 (AMD) .]

B. A person may not be held against the person's will in a hospital under this section, except that a person for whom an examiner has executed the certificate under subsection 2 may be detained in a hospital for a reasonable period of time, not to exceed 24 hours, pending endorsement by a judge or justice, if:

(1) For a person informally admitted under section 3831, the chief administrative officer of the psychiatric hospital undertakes to secure the endorsement immediately upon execution of the certificate by the examiner; and

(2) For a person sought to be involuntarily admitted under this section, the person or persons seeking the involuntary admission undertake to secure the endorsement immediately upon execution of the certificate by the examiner. [ 2007, c. 319, §9 (AMD) .]

C. Notwithstanding paragraph B, subparagraphs (1) and (2), a person sought to be admitted informally under section 3831 or involuntarily under this section may be transported to a psychiatric hospital and held there for evaluation and treatment pending judicial endorsement of the application and certificate if the endorsement is obtained between the soonest available hours of 7:00 a.m. and 11:00 p.m. [ 2007, c. 319, §9 (AMD) .]

[ 2007, c. 319, §9 (AMD) .]

**4. Custody and transportation.** Custody and transportation under this section are governed as follows.

A. Upon endorsement of the application and certificate by the judge or justice, a law enforcement officer or other person designated by the judge or justice may take the person into custody and transport that person to the psychiatric hospital designated in the application. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual. [ 2007, c. 319, §9 (AMD) .]

B. The Department of Health and Human Services is responsible for any transportation expenses under this section, including return from the psychiatric hospital if admission is declined. The department shall utilize any 3rd-party payment sources that are available. [2007, c. 319, §9 (AMD).]

C. When a person who is under a sentence or lawful detention related to commission of a crime and who is incarcerated in a jail or local correctional or detention facility is admitted to a psychiatric hospital under any of the procedures in this subchapter, the county where the incarceration originated shall pay all expenses incident to transportation of the person between the psychiatric hospital and the jail or local correctional or detention facility. [2007, c. 319, §9 (AMD).]

[ 2007, c. 319, §9 (AMD) .]

#### **5. Continuation of hospitalization.**

[ 2009, c. 651, §15 (RP) .]

**5-A. Continuation of hospitalization.** If there is need for further hospitalization of the person as determined by the chief administrative officer of the hospital, the chief administrative officer shall first determine if the person may be informally admitted under section 3831. If informal admission is not suitable or is refused by the person, the chief administrative officer may seek involuntary commitment in accordance with this subsection.

A. If the person is at a state mental health institute, the chief administrative officer may seek involuntary commitment by applying for an order under section 3864. [2009, c. 651, §16 (NEW).]

B. If the person is at a designated nonstate mental health institution, the chief administrative officer may seek involuntary commitment only by requesting the commissioner to apply for an order under section 3864. [2009, c. 651, §16 (NEW).]

C. An application under this subsection must be made to the District Court having territorial jurisdiction over the psychiatric hospital to which the person is admitted on an emergency basis and must be filed within 3 days from the date of admission of the patient under this section, except that, if the 3rd day falls on a weekend or holiday, the application must be filed on the next business day following that weekend or holiday. If no application to the District Court is timely filed, the person must be promptly discharged. [2009, c. 651, §16 (NEW).]

[ 2009, c. 651, §16 (NEW) .]

**6. Notice.** Upon admission of a person under this section, and after consultation with the person, the chief administrative officer of the psychiatric hospital shall notify, as soon as possible regarding the fact of admission, the person's:

A. Guardian, if known; [1997, c. 422, §12 (AMD).]

B. Spouse; [1997, c. 422, §12 (AMD).]

C. Parent; [1997, c. 422, §12 (AMD).]

D. Adult child; or [1997, c. 422, §12 (AMD).]

E. Either the next of kin or a friend, if no guardian or immediate family member is known or can be quickly located. [2009, c. 651, §17 (AMD).]

If the chief administrative officer has reason to believe that notice to any individual in paragraphs A to E would pose risk of harm to the person admitted, then notice may not be given to that individual.

[ 2009, c. 651, §17 (AMD) .]

**6-A. Notification to law enforcement of release after examination.** When a person is taken by a law enforcement officer to a hospital for examination under this section and not admitted but released, the chief administrative officer of the hospital shall notify the law enforcement officer or the law enforcement officer's agency of that release.

[ 2009, c. 451, §10 (NEW) .]

**7. Post-admission examination.** Every patient admitted to a psychiatric hospital under this section must be examined as soon as practicable after the patient's admission. If findings required for admission under subsection 2 are not certified in a 2nd opinion by a staff physician or licensed clinical psychologist within 24 hours after admission, the person must be immediately discharged.

A. [2009, c. 651, §18 (RP).]

B. [2009, c. 651, §18 (RP).]

C. [2009, c. 651, §18 (RP).]

[ 2009, c. 651, §18 (AMD) .]

**8. Rehospitalization from progressive treatment program.** An ACT team practitioner or the commissioner may apply under this section to admit to a state mental health institute a patient who fails to fully participate in the progressive treatment program in accordance with section 3873-A.

[ 2009, c. 651, §19 (AMD) .]

**9. Limitation.** Admission to a psychiatric hospital on an emergency basis under the provisions of this section is not commitment to a psychiatric hospital.

[ 2011, c. 541, §2 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 815, (AMD). 1987, c. 736, §53 (AMD). 1989, c. 568, §§1,3 (AMD). 1993, c. 592, §1 (AMD). 1993, c. 596, §3 (AMD). 1995, c. 62, §3 (AMD). 1995, c. 143, §1 (AMD). 1995, c. 364, §1 (AMD). 1995, c. 496, §2 (AMD). 1995, c. 560, §K37 (AMD). 1995, c. 560, §K83 (AFF). 1997, c. 422, §§8-12 (AMD). 1997, c. 438, §2 (AMD). 1997, c. 683, §B23 (AMD). RR 2001, c. 2, §A43 (COR). 2001, c. 354, §3 (AMD). 2003, c. 206, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 519, §§BBBB5-8 (AMD). 2005, c. 519, §§BBBB20 (AFF). 2007, c. 319, §9 (AMD). 2009, c. 276, §1 (AMD). 2009, c. 451, §10 (AMD). 2009, c. 651, §§13-19 (AMD). 2011, c. 541, §2 (AMD).

## §3864. JUDICIAL PROCEDURE AND COMMITMENT

**1. Application.** An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

A. The emergency application under section 3863, subsection 1; [1983, c. 459, §7 (NEW).]

B. The accompanying certificate of the medical practitioner under section 3863, subsection 2; [2009, c. 651, §20 (AMD).]

C. The certificate of the physician or psychologist under section 3863, subsection 7; [2009, c. 651, §20 (AMD).]



D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:

- (1) The patient's right to retain an attorney or to have an attorney appointed;
- (2) The patient's right to select or to have the patient's attorney select an independent examiner; and
- (3) How to contact the District Court; and [2009, c. 651, §20 (AMD).]

E. A copy of the notice and instructions given to the patient. [1997, c. 422, §14 (NEW).]

[2009, c. 651, §20 (AMD).]

**1-A. Involuntary treatment.** An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.

[2007, c. 446, §2 (NEW); 2007, c. 446, §7 (AFF).]

**2. Detention pending judicial determination.** Notwithstanding any other provisions of this subchapter, a person, with respect to whom an application for the issuance of an order for hospitalization has been filed, may not be released or discharged during the pendency of the proceedings, unless:

- A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin; [2007, c. 319, §10 (AMD).]
- B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety; [1995, c. 496, §3 (AMD).]
- C. A court orders release or discharge upon a writ of habeas corpus under section 3804; or [1995, c. 496, §3 (AMD).]
- D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital. [2007, c. 319, §10 (AMD).]

[2007, c. 319, §10 (AMD).]

**3. Notice of receipt of application.** The giving of notice of receipt of application and date of hearing under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:

- (1) To be mailed within 2 days of filing to the person; and
- (2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given. [1997, c. 422, §15 (AMD).]

B. A docket entry is sufficient evidence that notice under this subsection has been given. [1983, c. 459, §7 (NEW).]

[1997, c. 422, §15 (AMD).]

**4. Examination.** Examinations under this section are governed as follows.

- A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner. [ 2009 , c. 651 , §21 (AMD) . ]
- B. The examination must be held at a psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person. [ 2009 , c. 651 , §21 (AMD) . ]
- C. [ 2007 , c. 319 , §10 (RP) . ]
- D. [ 2007 , c. 319 , §10 (RP) . ]
- E. The examiner shall report to the court on:
- (1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;
  - (2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;
  - (3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;
  - (4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;
  - (5) Whether adequate community resources are available for care and treatment of the person's mental illness; and
  - (6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program. [ 2009 , c. 651 , §21 (AMD) . ]
- F. [ 2007 , c. 446 , §7 (AFF) ; 2007 , c. 446 , §3 (RP) . ]
- G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner. [ 2009 , c. 651 , §21 (NEW) . ]

[ 2009 , c. 651 , §21 (AMD) . ]

**5. Hearing.** Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

- (1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.
- (2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.
- (2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.
- (3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply. [ 2009 , c. 651 , §22 (AMD) . ]

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1. [2007, c. 670, §18 (NEW).]

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the psychiatric hospital to which the patient is currently admitted, the Department of Health and Human Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a psychiatric hospital following the hearing, then the hospital from which the patient came shall transport the patient to the admitting psychiatric hospital. If the patient is to be released following the hearing, then the hospital from which the patient came shall return the patient to that hospital or, at the patient's request, return the patient to the patient's place of residence. [2007, c. 319, §10 (AMD).]

C. The court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [2007, c. 319, §10 (AMD).]

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person. [2007, c. 319, §10 (AMD).]

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person. [2005, c. 519, Pt. BBBB, §10 (AMD); 2005, c. 519, Pt. BBBB, §20 (AFF).]

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by the psychiatric hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose. [2007, c. 319, §10 (AMD).]

G. A stenographic or electronic record must be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing. [2007, c. 319, §10 (AMD).]

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or the person's counsel. [2007, c. 319, §10 (AMD).]

[2009, c. 651, §22 (AMD).]

**6. Court findings.** Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

- (1) Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm;
- (1-A) That adequate community resources for care and treatment of the person's mental illness are unavailable;
- (2) That inpatient hospitalization is the best available means for treatment of the patient; and
- (3) That it is satisfied with the individual treatment plan offered by the psychiatric hospital to which the applicant seeks the patient's involuntary commitment. [2009, c. 651, §23 (AMD).]

B. If the District Court makes the findings in paragraph A, subparagraphs (1), (1-A) and (2), but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the psychiatric hospital. [2009, c. 651, §23 (AMD).]

C. If the District Court makes the findings in section 3873-A, subsection 1, the court may issue an order under section 3873-A requiring the person to participate in a progressive treatment program. [2009, c. 651, §23 (NEW).]

[ 2009, c. 651, §23 (AMD) .]

**7. Commitment.** Upon making the findings described in subsection 6, paragraph A, the court may order commitment to a psychiatric hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing. [1983, c. 459, §7 (NEW).]

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged immediately. [1995, c. 496, §6 (AMD).]

[ 2009, c. 651, §24 (AMD) .]

**7-A. Involuntary treatment.** This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

- (1) That the person lacks the capacity to make an informed decision regarding treatment;
- (2) That the person is unable or unwilling to comply with recommended treatment;
- (3) That the need for the treatment outweighs the risks and side effects; and
- (4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF).]

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

- (1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or

(2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm. [2007, c. 446, §4 (NEW); 2007, c. 446, §7 (AFF).]

C. The parties may agree to change, terminate or extend the treatment plan during the time period of an order for involuntary treatment. [2009, c. 651, §25 (AMD).]

D. For good cause shown, any party may apply to the court to change or terminate the treatment plan. [2009, c. 651, §26 (AMD).]

[2009, c. 651, §§25, 26 (AMD).]

**8. Continued involuntary hospitalization.** If the chief administrative officer of the psychiatric hospital to which a person has been committed involuntarily by the District Court recommends that continued involuntary hospitalization is necessary for that person, the chief administrative officer shall notify the commissioner. The commissioner may then, not later than 21 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court that has territorial jurisdiction over the psychiatric hospital designated for treatment in the application by the commissioner for a hearing to be held under this section.

[2007, c. 319, §10 (AMD).]

**9. Transportation.** Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any psychiatric hospital to a court that has committed the person must be provided at the expense of the Department of Health and Human Services. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations.

[2007, c. 319, §10 (AMD).]

**10. Expenses.** With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court is responsible for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person.

[2007, c. 319, §10 (AMD).]

**11. Appeals.** A person ordered by the District Court to be committed to a psychiatric hospital may appeal from that order to the Superior Court.

A. The appeal is on questions of law only. [1983, c. 459, §7 (NEW).]

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous. [1983, c. 459, §7 (NEW).]

C. The order of the District Court remains in effect pending the appeal. [2007, c. 319, §10 (AMD).]

D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection. [1983, c. 459, §7 (NEW).]

[2007, c. 319, §10 (AMD).]

**12. Transmission of abstract of court ruling to the State Bureau of Identification.** Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment; [2007, c. 670, §19 (NEW).]

B. The court's ruling that the person has been involuntarily committed; and [2007, c. 670, §19 (NEW).]

C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13. [2007, c. 670, §19 (NEW).]

The abstract required in this subsection is confidential and is not a "public record" as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

[ 2007, c. 670, §19 (NEW) .]

**13. Firearms possession prohibition notification.** A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

[ 2007, c. 670, §20 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 496, §§3-6 (AMD). 1997, c. 422, §§13-19 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 519, §§BBB9,10 (AMD). 2005, c. 519, §BBB20 (AFF). 2007, c. 319, §10 (AMD). 2007, c. 446, §§2-4 (AMD). 2007, c. 446, §7 (AFF). 2007, c. 472, §1 (AMD). 2007, c. 670, §§18-20 (AMD). 2009, c. 281, §3 (AMD). 2009, c. 651, §§20-26 (AMD).

## §3865. HOSPITALIZATION BY FEDERAL AGENCY

If a person ordered to be hospitalized under section 3864 is eligible for hospital care or treatment by any agency of the United States, the court, upon receipt of a certificate from the agency showing that facilities are available and that the person is eligible for care or treatment in the facilities, may order the person to be placed in the custody of the agency for hospitalization. [2007, c. 319, §11 (AMD).]

**1. Rules and rights.** A person admitted under this section to any psychiatric hospital or institution operated by any agency of the United States, inside or outside the State, is subject to the rules of the agency, but retains all rights to release and periodic court review granted by this subchapter.

[ 2007, c. 319, §11 (AMD) .]

**2. Powers of chief administrative officer.** The chief administrative officer of any psychiatric hospital or institution operated by a federal agency in which the person is hospitalized has, with respect to the person, the same powers as the chief administrative officer of psychiatric hospitals or the commissioner within this State with respect to detention, custody, transfer, conditional release or discharge of patients.

[ 2007, c. 319, §11 (AMD) .]

**3. Court jurisdiction.** Every order of hospitalization issued under this section is conditioned on the retention of jurisdiction in the courts of this State to, at any time:

- A. Inquire into the mental condition of a person hospitalized; and [1983, c. 459, §7 (NEW).]
- B. Determine the necessity for continuance of the person's hospitalization. [2007, c. 319, §11 (AMD).]

[ 2007, c. 319, §11 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 2007, c. 319, §11 (AMD).

### §3866. MEMBERS OF THE ARMED FORCES

**1. Admission to psychiatric hospital.** Any member of the Armed Forces of the United States who was a resident of the State at the time of the member's induction into the service and who is determined by a federal board of medical officers to have a mental disease not incurred in line of duty must be received, at the discretion of the commissioner and without formal commitment, at either of the state mental health institutes, upon delivery at the institute designated by the commissioner of:

- A. The member of the Armed Forces; and [1983, c. 459, §7 (NEW).]
- B. The findings of the board of medical officers that the member is mentally ill. [2007, c. 319, §12 (AMD).]

[ 2007, c. 319, §12 (AMD) .]

**2. Status.** After delivery of the member of the Armed Forces at the state mental health institute designated by the commissioner, the member's status is the same as if the member had been committed to the institute under section 3864.

[ 2007, c. 319, §12 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 2007, c. 319, §12 (AMD).

### §3867. TRANSFER FROM OUT-OF-STATE INSTITUTIONS

**1. Commissioner's authority.** The commissioner may, upon request of a competent authority of the District of Columbia or of a state that is not a member of the Interstate Compact on Mental Health, authorize the transfer of a mentally ill person directly to a state mental health institute in Maine, if:

- A. The person has resided in this State for a consecutive period of one year during the 3-year period immediately preceding commitment in the other state or the District of Columbia; [2007, c. 319, §13 (AMD).]
- B. The person is currently confined in a recognized institution for the care of the mentally ill as the result of proceedings considered legal by that state or by the District of Columbia; [2007, c. 319, §13 (AMD).]
- C. A duly certified copy of the original commitment proceedings and a copy of the person's case history is supplied; [2007, c. 319, §13 (AMD).]
- D. The commissioner, after investigation, considers the transfer justifiable; and [1997, c. 422, §20 (AMD).]

E. All expenses of the transfer are borne by the agency requesting it. [1983, c. 459, §7 (NEW) .]

[ 2007, c. 319, §13 (AMD) .]

**2. Receipt of patient.** When the commissioner has authorized a transfer under this section, the superintendent of the state mental health institute designated by the commissioner shall receive the patient as having been regularly committed to the state mental health institute under section 3864.

[ 2007, c. 319, §13 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1997, c. 422, §20 (AMD). 2007, c. 319, §13 (AMD) .

## §3868. TRANSFER TO OTHER INSTITUTIONS

**1. To other hospitals.** The commissioner may transfer, or authorize the transfer of, a patient from one hospital to another, either inside or outside the State, if the commissioner determines that it would be consistent with the medical or psychiatric needs of the patient to do so.

A. Before a patient is transferred, the commissioner shall give written notice of the transfer to the patient's guardian, the patient's parents or spouse or, if none of these persons exists or can be located, to the patient's next of kin or friend, except that if the chief administrative officer of the hospital to which the patient is currently admitted has reason to believe that notice to any of these individuals would pose risk of harm to the person, then notice may not be given to that individual. [1997, c. 422, §21 (AMD) .]

B. In making all such transfers, the commissioner shall give due consideration to the relationship of the patient to the patient's family, guardian or friends, in order to maintain relationships and encourage visits beneficial to the patient. [2007, c. 319, §14 (AMD) .]

[ 2007, c. 319, §14 (AMD) .]

**2. To federal agency.** Upon receipt of a certificate of an agency of the United States that facilities are available for the care or treatment of any involuntarily hospitalized person and that the person is eligible for care and treatment in a hospital or institution of the agency, the chief administrative officer of the psychiatric hospital may cause the person's transfer to the agency of the United States for hospitalization.

A. Upon making such a transfer, the chief administrative officer shall notify the court that ordered hospitalization and the persons specified in subsection 1, paragraph A. [2007, c. 319, §14 (AMD) .]

B. A person may not be transferred to an agency of the United States if the person is confined pursuant to conviction of any felony or misdemeanor or if the person has been acquitted of the charge solely on the ground of mental illness, unless before the transfer the court originally ordering confinement of the person enters an order for transfer after appropriate motion and hearing. [2007, c. 319, §14 (AMD) .]

C. Any person transferred under this section to an agency of the United States is deemed to be hospitalized by the agency pursuant to the original order of hospitalization. [1983, c. 459, §7 (NEW) .]

[ 2007, c. 319, §14 (AMD) .]

#### SECTION HISTORY



1983, c. 459, §7 (NEW). 1997, c. 422, §21 (AMD). 2007, c. 319, §14 (AMD).

### **§3869. RETURN FROM UNAUTHORIZED ABSENCE**

If any patient committed under section 3864 leaves the grounds of the psychiatric hospital without authorization of the chief administrative officer of the psychiatric hospital or the chief administrative officer's designee, or refuses to return to the psychiatric hospital from a community pass when requested to do so by the chief administrative officer or the chief administrative officer's designee, law enforcement personnel of the State or of any of its subdivisions may, upon request of the chief administrative officer or the chief administrative officer's designee, assist in the return of the patient to the psychiatric hospital. [2007, c. 319, §15 (AMD).]

#### **SECTION HISTORY**

1983, c. 459, §7 (NEW). 2007, c. 319, §15 (AMD).

### **§3870. CONVALESCENT STATUS**

**1. Authority.** The chief administrative officer of a state mental health institute may release an improved patient on convalescent status when the chief administrative officer believes that the release is in the best interest of the patient and that the patient does not pose a likelihood of serious harm. The chief administrative officer of a nonstate mental health institute may release an improved patient on convalescent status when the chief administrative officer believes that the release is in the best interest of the patient, the patient does not pose a likelihood of serious harm and, when releasing an involuntarily committed patient, the chief administrative officer has obtained the approval of the commissioner after submitting a plan for continued responsibility.

A. Release on convalescent status may include provisions for continuing responsibility to and by the psychiatric hospital, including a plan of treatment on an outpatient or nonhospital basis. [2007, c. 319, §16 (AMD).]

B. Before release on convalescent status under this section, the chief administrative officer of a psychiatric hospital shall make a good faith attempt to notify, by telephone, personal communication or letter, of the intent to release the patient on convalescent status and of the plan of treatment, if any:

- (1) The parent or guardian of a minor patient;
- (2) The legal guardian of an adult incompetent patient, if any is known; or
- (3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given.

If the chief administrative officer of the psychiatric hospital to which the patient is currently admitted has reason to believe that notice to any of the individuals listed in this paragraph would pose risk of harm to the patient, then notice may not be given to that individual. [2007, c. 319, §16 (AMD).]

C. The psychiatric hospital is not liable when good faith attempts to notify the parents, spouse or guardian have failed. [2007, c. 319, §16 (AMD).]

D. Before releasing a patient on convalescent status, the chief administrative officer of the psychiatric hospital shall advise the patient, orally and in writing, of the terms of the patient's convalescent status, the treatment available while the patient is on convalescent status and, if the patient is a voluntary patient, of the patient's right to request termination of the status and, if involuntarily committed, the means by which and conditions under which rehospitalization may occur. [2007, c. 319, §16 (AMD).]

[2007, c. 319, §16 (AMD).]

**2. Reexamination.** Before a patient has spent a year on convalescent status, and at least once a year thereafter, the chief administrative officer of the psychiatric hospital shall reexamine the facts relating to the hospitalization of the patient on convalescent status.

[ 2007, c. 319, §16 (AMD) .]

**3. Discharge.** Discharge from convalescent status is governed as follows.

A. If the chief administrative officer of the psychiatric hospital determines that, in view of the condition of the patient, convalescent status is no longer necessary, the chief administrative officer shall discharge the patient and make a report of the discharge to the commissioner. [ 2007, c. 319, §16 (AMD) .]

B. The chief administrative officer shall terminate the convalescent status of a voluntary patient within 10 days after the day the chief administrative officer receives from the patient a request for discharge from convalescent status. [1997, c. 422, §22 (AMD) .]

C. Discharge from convalescent status occurs upon expiration of the period of involuntary commitment. [2005, c. 519, Pt. BBBB, §11 (NEW); 2005, c. 519, Pt. BBBB, §20 (AFF) .]

[ 2007, c. 319, §16 (AMD) .]

**4. Rehospitalization.** Rehospitalization of patients under this section is governed as follows.

A. If, prior to discharge, there is reason to believe that it is in the best interest of an involuntarily committed patient on convalescent status to be rehospitalized, or if an involuntarily committed patient on convalescent status poses a likelihood of serious harm, the commissioner, or the chief administrative officer of the psychiatric hospital with the approval of the commissioner, may issue an order for the immediate rehospitalization of the patient. [2007, c. 319, §16 (AMD) .]

B. [1997, c. 422, §22 (RP) .]

C. If the order is not voluntarily complied with, an involuntarily committed patient on convalescent leave may be returned to the psychiatric hospital if the following conditions are met:

- (1) An order is issued pursuant to paragraph A;
- (2) The order is brought before a District Court Judge or justice of the peace; and
- (3) Based upon clear and convincing evidence that return to the psychiatric hospital is in the patient's best interest or that the patient poses a likelihood of serious harm, the District Court Judge or justice of the peace approves return to the psychiatric hospital.

After approval by the District Court Judge or justice of the peace, a law enforcement officer may take the patient into custody and arrange for transportation of the patient in accordance with the provisions of section 3863, subsection 4.

This paragraph does not preclude the use of protective custody by law enforcement officers pursuant to section 3862. [2007, c. 319, §16 (AMD) .]

[ 2007, c. 319, §16 (AMD) .]

**5. Notice of change of status.** Notice of the change of convalescent status of patients is governed as follows.

A. If the convalescent status of a patient in a psychiatric hospital is to be changed, either because of a decision of the chief administrative officer of the psychiatric hospital or because of a request made by a voluntary patient, the chief administrative officer of the psychiatric hospital shall immediately make a good faith attempt to notify, by telephone, personal communication or letter, of the contemplated change:

- (1) The parent or guardian of a minor patient;

- (2) The guardian of an adult incompetent patient, if any is known; or
- (3) The spouse or adult next of kin of an adult competent patient, unless the patient requests in writing that the notice not be given.

If the chief administrative officer of the psychiatric hospital to which the patient is currently admitted has reason to believe that notice to any of the individuals listed in this paragraph would pose risk of harm to the person, then notice may not be given to that individual. [2007, c. 319, §16 (AMD).]

B. If the change in convalescent status is due to the request of a voluntary patient, the chief administrative officer of the psychiatric hospital shall give the required notice within 10 days after the day the chief administrative officer receives the request. [2007, c. 319, §16 (AMD).]

C. The psychiatric hospital is not liable when good faith attempts to notify the parents, spouse or guardian have failed. [2007, c. 319, §16 (AMD).]

[ 2007, c. 319, §16 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1987, c. 736, §54 (AMD). 1997, c. 422, §22 (AMD). 2005, c. 519, §§BBB11,12 (AMD). 2005, c. 519, §BBB20 (AFF). 2007, c. 319, §16 (AMD).

## §3871. DISCHARGE

**1. Examination.** The chief administrative officer of a psychiatric hospital shall, as often as practicable, but no less often than every 30 days, examine or cause to be examined every patient to determine that patient's mental status and need for continuing hospitalization.

[ 2007, c. 319, §17 (AMD) .]

**2. Conditions for discharge.** The chief administrative officer of a psychiatric hospital shall discharge, or cause to be discharged, any patient when:

- A. Conditions justifying hospitalization no longer obtain; [1983, c. 459, §7 (NEW).]
- B. The patient is transferred to another hospital for treatment for that patient's mental or physical condition; [1997, c. 422, §23 (AMD).]
- C. The patient is absent from the psychiatric hospital unlawfully for a period of 90 days; [2007, c. 319, §17 (AMD).]
- D. Notice is received that the patient has been admitted to another hospital, inside or outside the State, for treatment for that patient's mental or physical condition; or [1997, c. 422, §23 (AMD).]
- E. Although lawfully absent from the psychiatric hospital, the patient is admitted to another hospital, inside or outside the State, for treatment of that patient's mental or physical condition, except that, if the patient is directly admitted to another hospital and it is the opinion of the chief administrative officer of the psychiatric hospital that the patient will directly reenter the psychiatric hospital within the foreseeable future, the patient need not be discharged. [2007, c. 319, §17 (AMD).]

[ 2007, c. 319, §17 (AMD) .]

**3. Discharge against medical advice.** The chief administrative officer of a psychiatric hospital may discharge, or cause to be discharged, any patient even though the patient is mentally ill and appropriately hospitalized in the psychiatric hospital, if:

- A. The patient and either the guardian, spouse or adult next of kin of the patient request that patient's discharge; and [1997, c. 422, §23 (AMD).]

B. In the opinion of the chief administrative officer of the psychiatric hospital, the patient does not pose a likelihood of serious harm due to that patient's mental illness. [2007, c. 319, §17 (AMD).]

[2007, c. 319, §17 (AMD).]

**3-A. Discharge limited.** A psychiatric hospital may not discharge a person committed under section 3864 solely because the person is placed in execution of a sentence in a county jail.

[2009, c. 281, §4 (NEW).]

#### 4. Reports.

[1995, c. 496, §7 (RP).]

**5. Notice.** Notice of discharge is governed as follows.

A. When a patient is discharged under this section, the chief administrative officer of the psychiatric hospital shall immediately make a good faith attempt to notify the following people, by telephone, personal communication or letter, that the discharge has taken or will take place:

- (1) The parent or guardian of a minor patient;
- (2) The guardian of an adult incompetent patient, if any is known; or
- (3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given or unless the patient was transferred from or will be returned to a state correctional facility.

If the chief administrative officer of the psychiatric hospital to which the patient is currently admitted has reason to believe that notice to any of the individuals listed in this paragraph would pose a risk of harm to the person, then notice may not be given to that individual. [2007, c. 319, §17 (AMD).]

B. The psychiatric hospital is not liable when good faith attempts to notify the parents, spouse or guardian have failed. [2007, c. 319, §17 (AMD).]

[2007, c. 319, §17 (AMD).]

**6. Discharge to progressive treatment program.** If a person participates in the progressive treatment program under section 3873-A, the time period of a commitment under this section terminates on entry into the progressive treatment program.

[2009, c. 651, §27 (AMD).]

**7. Firearms and discharge planning.** Discharge planning must include inquiries and documentation of those inquiries into access by the patient to firearms and notification to the patient, the patient's family and any other caregivers that possession, ownership or control of a firearm by the person to be discharged is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

[2009, c. 451, §11 (NEW).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 496, §§7,8 (AMD). 1997, c. 422, §23 (AMD). 2005, c. 519, §BBBB13 (AMD). 2005, c. 519, §BBBB20 (AFF). 2007, c. 319, §17 (AMD). 2009, c. 281, §4 (AMD). 2009, c. 451, §11 (AMD). 2009, c. 651, §27 (AMD).

## **§3872. TREATMENT OF DUALY DIAGNOSED PERSONS**

**(REPEALED)**

### SECTION HISTORY

1985, c. 615, (NEW). 1997, c. 422, §24 (RP).

## **§3873. PROGRESSIVE TREATMENT PROGRAM**

**(REPEALED)**

### SECTION HISTORY

2005, c. 519, §BBBB14 (NEW). 2005, c. 519, §BBBB20 (AFF). 2009, c. 276, §2 (AMD). 2009, c. 321, §§1-4 (AMD). 2009, c. 651, §28 (RP).

## **§3873-A. PROGRESSIVE TREATMENT PROGRAM**

**1. Application.** The superintendent or chief administrative officer of a psychiatric hospital, the commissioner, the director of an ACT team, a medical practitioner, a law enforcement officer or the legal guardian of the patient who is the subject of the application may obtain an order from the District Court to admit a patient to a progressive treatment program upon the following conditions:

- A. The patient suffers from a severe and persistent mental illness; [2009, c. 651, §29 (NEW).]
- B. The patient poses a likelihood of serious harm; [2009, c. 651, §29 (NEW).]
- C. The patient has the benefit of a suitable individualized treatment plan; [2009, c. 651, §29 (NEW).]
- D. Licensed and qualified community providers are available to support the treatment plan; [2011, c. 492, §1 (AMD).]
- E. The patient is unlikely to follow the treatment plan voluntarily; [2009, c. 651, §29 (NEW).]
- F. Court-ordered compliance will help to protect the patient from interruptions in treatment, relapses or deterioration of mental health; and [2009, c. 651, §29 (NEW).]
- G. Compliance will enable the patient to survive more safely in a community setting without posing a likelihood of serious harm. [2009, c. 651, §29 (NEW).]

[2011, c. 492, §1 (AMD).]

**2. Contents of the application.** The application must be accompanied by a certificate of a medical practitioner providing the facts and opinions necessary to support the application. The certificate must indicate that the examiner's opinions are based on one or more recent examinations of the patient or upon the examiner's recent personal treatment of the patient. Opinions of the examiner may be based on personal observation and must include a consideration of history and information from other sources considered reliable by the examiner when such sources are available. The application must include a proposed individualized treatment plan and identify one or more licensed and qualified community providers willing to support the plan.

The applicant must also provide a written statement certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:

- A. The patient's right to retain an attorney or to have an attorney appointed; [2009, c. 651, §29 (NEW).]

B. The patient's right to select or to have the patient's attorney select an independent examiner; and  
[ 2009, c. 651, §29 (NEW) . ]

C. How to contact the District Court. [ 2009, c. 651, §29 (NEW) . ]

[ 2011, c. 492, §1 (AMD) . ]

**3. Notice of hearing.** Upon receipt by the District Court of the application or any motion relating to the application, the court shall cause written notice of hearing to be mailed within 2 days to the applicant, to the patient and to the following persons if known: to anyone serving as the patient's guardian and to the patient's spouse, a parent or an adult child, if any. If no immediate relatives are known or can be located, notice must be mailed to a person identified as the patient's next of kin or a friend, if any are known. If the applicant has reason to believe that notice to any individual would pose risk of harm to the patient, notice to that individual may not be given. A docket entry is sufficient evidence that notice under this subsection has been given. If the patient is not hospitalized, the applicant shall serve the notice of hearing upon the patient personally and provide proof of service to the court.

[ 2011, c. 492, §1 (AMD) . ]

**4. Examinations.** Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination is notified by the applicant of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner. [ 2009, c. 651, §29 (NEW) . ]

B. The examination must be held at a psychiatric hospital, a crisis center, an ACT team facility or at another suitable place not likely to have a harmful effect on the mental health of the patient. [ 2009, c. 651, §29 (NEW) . ]

C. The examiner shall report to the court on:

- (1) Whether the patient is a mentally ill person within the meaning of section 3801, subsection 5;
- (2) Whether the patient is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A; and
- (3) Whether the patient poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A. [ 2009, c. 651, §29 (NEW) . ]

[ 2009, c. 651, §29 (NEW) . ]

**5. Hearings.** Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application or any subsequent motion not later than 14 days from the date when the application or motion is filed. For good cause shown, on a motion by any party or by the court on its own motion, the hearing may be continued for a period not to exceed 21 additional days. If the hearing is not held within the time specified, or within the specified continuance period, the court shall dismiss the application or motion. In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply. [ 2009, c. 651, §29 (NEW) . ]

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to harm the mental health of the patient. The applicant shall transport the patient to and from the place of hearing. If the patient is released following the hearing, the patient must be transported to the patient's place of residence if the patient so requests. [ 2009, c. 651, §29 (NEW) . ]

C. The court shall conduct the hearing in accordance with accepted rules of evidence. The patient, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person and may subpoena any witness. [2009, c. 651, §29 (NEW).]

D. The patient must be afforded an opportunity to be represented by counsel, and, if neither the patient nor others provide counsel, the court shall appoint counsel for the patient. [2009, c. 651, §29 (NEW).]

E. At the time of hearing, the applicant shall submit to the court expert testimony to support the application and to describe the proposed individual treatment plan. The applicant shall bear the expense of providing witnesses for this purpose. [2009, c. 651, §29 (NEW).]

F. The court may consider, but is not bound by, an advance directive or durable power of attorney executed by the patient and may receive testimony from the patient's guardian or attorney in fact. [2009, c. 651, §29 (NEW).]

G. A stenographic or electronic record must be made of the proceedings. The record and all notes, exhibits and other evidence are confidential and must be retained as part of the District Court records for a period of 2 years from the date of the hearing. [2009, c. 651, §29 (NEW).]

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the patient or the patient's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the patient or patient's counsel. [2009, c. 651, §29 (NEW).]

I. Except as provided in this subsection, the provisions of section 3864, subsections 10 and 11 apply to expenses and the right of appeal. [2009, c. 651, §29 (NEW).]

[2009, c. 651, §29 (NEW).]

**6. Order.** After notice, examination and hearing, the court may issue an order effective for a period of up to 12 months directing the patient to follow an individualized treatment plan and identifying incentives for compliance and potential consequences for noncompliance.

[2009, c. 651, §29 (NEW).]

**7. Compliance.** To ensure compliance with the treatment plan, the court may:

A. Order that the patient be committed to the care and supervision of an ACT team or other outpatient facility with such restrictions or conditions as may be reasonable and necessary to ensure plan compliance; [2009, c. 651, §29 (NEW).]

B. Endorse an application for admission to a psychiatric hospital under section 3863 conditioned on receiving a certificate from a medical practitioner that the patient has failed to comply with an essential requirement of the treatment plan; and [2011, c. 541, §3 (AMD).]

C. Order that any present or conditional restrictions on the patient's liberty or control over the patient's assets or affairs be suspended or ended upon achievement of the designated goals under the treatment plan. [2009, c. 651, §29 (NEW).]

[2011, c. 541, §3 (AMD).]

**8. Consequences.** In addition to any conditional remedies contained in the court's order, if the patient fails to comply with the treatment plan, the applicant may file with the court a motion for enforcement supported by a certificate from a medical practitioner identifying the circumstances of noncompliance. If after notice and hearing the court finds that the patient has been noncompliant and that the patient presents

a likelihood of serious harm, the court may authorize emergency hospitalization under section 3863 if the practitioner's certificate supporting the motion complies with section 3863, subsection 2. Nothing in this section precludes the use of protective custody by law enforcement officers under section 3862.

[ 2009, c. 651, §29 (NEW) .]

**9. Motion to dissolve, modify or extend.** For good cause shown, any party to the application may move to dissolve or modify an order or to extend the term of the treatment plan for an additional term of up to one year.

[ 2009, c. 651, §29 (NEW) .]

#### **10. Limitation.**

[ 2011, c. 492, §2 (RP) .]

#### SECTION HISTORY

2009, c. 651, §29 (NEW). 2011, c. 492, §§1, 2 (AMD). 2011, c. 541, §3 (AMD).

### Subchapter 5: MAINE COMMISSION ON MENTAL HEALTH HEADING: PL 1987, C. 887, §8 (NEW)

#### **§3901. MAINE COMMISSION ON MENTAL HEALTH; ESTABLISHMENT; MEMBERSHIP; COMPENSATION**

*(REPEALED)*

#### SECTION HISTORY

1987, c. 887, §8 (NEW). 1989, c. 335, §4 (AMD). 1989, c. 503, §B163 (AMD). 1989, c. 878, §A103 (AMD). 1991, c. 622, §S33 (RP).

#### **§3902. POWERS AND DUTIES**

*(REPEALED)*

#### SECTION HISTORY

1987, c. 887, §8 (NEW). 1989, c. 335, §5 (AMD). 1991, c. 622, §S34 (RP). 1991, c. 781, §A3 (AMD). 1993, c. 349, §69 (RP).

#### **§3903. REPORTS**

*(REPEALED)*

#### SECTION HISTORY

1987, c. 887, §8 (NEW). 1991, c. 622, §S35 (RP).



## Chapter 5: INTELLECTUAL DISABILITIES AND AUTISM

### Subchapter 1: GENERAL PROVISIONS

#### §5001. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 459, §7 (NEW).]

##### 1. Bureau.

[ 1993, c. 410, Pt. CCC, §23 (RP) .]

##### 1-A. Division.

[ 1995, c. 560, Pt. K, §38 (RP) .]

**1-B. Correspondent.** "Correspondent" means a person designated by the Consumer Advisory Board or its successor to act as a next friend of a person with an intellectual disability or autism.

[ 2011, c. 542, Pt. A, §74 (AMD) .]

**1-C. Family.** "Family" means those persons that the person defines as included in that person's family, including as appropriate unpaid individuals with whom the person resides.

[ 2007, c. 356, §9 (NEW); 2007, c. 356, §31 (AFF) .]

**2. Incapacitated person.** "Incapacitated person" means any person who is impaired by reason of intellectual disability or autism to the extent that the person lacks sufficient understanding or capacity to make, communicate or implement responsible personal decisions or decisions regarding the person's property.

[ 2011, c. 542, Pt. A, §75 (AMD) .]

**2-A. Individual support coordinator.** "Individual support coordinator" means a regional staff member of the department with the responsibility for coordinating the personal planning and professional services for a person eligible for adult developmental services under this Title.

[ 2011, c. 542, Pt. A, §76 (AMD) .]

**3. Intellectual disability.** "Intellectual disability" means a condition of significantly subaverage intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.

[ 2011, c. 542, Pt. A, §77 (AMD) .]

##### 3-A. Mentally retarded.

[ 2011, c. 542, Pt. A, §78 (RP) .]

**3-B. Person.** "Person" means an adult with an intellectual disability or autism.

[ 2011, c. 542, Pt. A, §79 (AMD) .]

**3-C. Personal planning.** "Personal planning" means a process that assists and supports each person who has an intellectual disability or autism in creating a vision for how to live in and be a part of the community.

[ 2011, c. 542, Pt. A, §80 (AMD) .]

**3-D. Personal planning team.** "Personal planning team" means the person with an intellectual disability or autism, the person's guardian, if any, the person's individual support coordinator or case manager and other individuals chosen or identified by the person to participate in personal planning.

[ 2011, c. 542, Pt. A, §81 (AMD) .]

**3-E. Professional services.** "Professional services" means services provided by individuals licensed to provide medical or behavioral health care and treatment, including but not limited to physicians, nurses, physical therapists, occupational therapists, psychologists, speech therapists and dentists.

[ 2007, c. 356, §14 (NEW); 2007, c. 356, §31 (AFF) .]

**4. Protective services.** "Protective services" means services which will separate incapacitated adults from danger, including, but not limited to:

A. Social, medical and psychiatric services necessary to preserve the incapacitated adult's rights and resources and to maintain the incapacitated adult's physical and mental well-being; and [1983, c. 459, §7 (NEW) .]

B. Seeking guardianship or a protective order under Title 18-A, Article 5. [1983, c. 459, §7 (NEW) .]

[ 1983, c. 459, §7 (NEW) .]

**5. Region.** "Region" means any of the regions established by the department.

[ 1995, c. 560, Pt. K, §39 (AMD) .]

**6. Supportive services.** "Supportive services" means services to make it possible for an incapacitated person to become rehabilitated or self-sufficient to the maximum extent possible, including but not limited to:

A. Counseling; [1983, c. 459, §7 (NEW) .]

B. Transportation; [1983, c. 459, §7 (NEW) .]

C. Assistance in obtaining adequate housing; [1983, c. 459, §7 (NEW) .]

D. Medical and psychiatric care; and [1983, c. 459, §7 (NEW) .]

E. Nutritional services. [1983, c. 459, §7 (NEW) .]

[ 1983, c. 459, §7 (NEW) .]

**7. Ward.** "Ward" means a person for whom the department has been duly appointed guardian under Title 18-A, article V, Part 6.

[ 1995, c. 560, Pt. K, §40 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1989, c. 73, §§3,4 (AMD). 1993, c. 410, §§CCC23-25 (AMD). 1995, c. 560, §§K38-40 (AMD). 2007, c. 356, §§8-14 (AMD). 2007, c. 356, §31 (AFF). 2011, c. 542, Pt. A, §§74-81 (AMD).

## §5002. POLICY

**1. Services.** It is the policy of the State to provide education, training and habilitative services to persons with intellectual disabilities or autism who need those services, except that nothing in this chapter may replace or limit the right of any person with an intellectual disability or autism to treatment by spiritual means alone, through prayer, if that treatment is requested by the person or by the person's next of kin or guardian.

[ 2011, c. 542, Pt. A, §82 (AMD) .]

**2. Setting.** It is the policy of the State that the setting for the services described in subsection 1 must, consistent with adequate care and treatment:

A. Impose the fewest possible restrictions on the liberty of persons with intellectual disabilities or autism; and [2011, c. 542, Pt. A, §82 (AMD) .]

B. Be as close as possible to the patterns and norms of the mainstream of society. [1983, c. 459, §7 (NEW) .]

[ 2011, c. 542, Pt. A, §82 (AMD) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 2011, c. 542, Pt. A, §82 (AMD).

## §5003. SYSTEM OF CARE FOR MENTALLY RETARDED CLIENTS (REPEALED)

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 712, §§2,3 (AMD). 1989, c. 628, §§1,2 (AMD). 1991, c. 780, §DD2 (AMD). 1993, c. 410, §§CCC26,27 (AMD). 1995, c. 368, §GG5 (AMD). 1995, c. 560, §§K41-45 (AMD). 2007, c. 356, §31 (AFF). 2007, c. 356, §15 (RP).

## §5003-A. SYSTEM OF CARE FOR CLIENTS WITH INTELLECTUAL DISABILITIES OR AUTISM

**1. System of care.** The Legislature declares that the system of care through which the State provides services to and programs for persons with intellectual disabilities or autism must be designed to protect the integrity of the legal and human rights of these persons and to meet their needs consistent with the principles guiding delivery of services as set forth in section 5610.

[ 2011, c. 542, Pt. A, §83 (AMD) .]

**2. Responsibilities of the department.** To facilitate the development of a system that meets the needs of persons with intellectual disabilities or autism, the commissioner shall:

A. Provide a mechanism for the identification, evaluation, treatment and reassessment of and the provision of services to persons with intellectual disabilities or autism that is consistent with the principles guiding delivery of services, as set forth in section 5610, through appropriate personal planning offered to persons served by the department in accordance with section 5470-B; [2011, c. 542, Pt. A, §83 (AMD) .]

B. Identify the needs and desires of persons with intellectual disabilities or autism through appropriate personal planning and record any unmet needs of persons served or eligible for service by the department for development of budget requests to the Governor that are adequate to meet such needs; [2011, c. 542, Pt. A, §83 (AMD) .]

C. Provide programs, insofar as resources permit, for appropriate services and supports to persons with intellectual disabilities or autism regardless of age, severity of need or ability to pay; [ 2011, c. 542, Pt. A, §83 (AMD). ]

D. Support the establishment of community services for persons eligible to receive services from the department by promoting access to professional services in the person's community. Such support may be provided directly or through contracts with qualified providers. For persons who have professional service needs identified through personal planning, the department shall monitor the provision of those services; [ 2007, c. 356, §16 (NEW); 2007, c. 356, §31 (AFF). ]

E. Eliminate the department's own duplicative and unnecessary administrative procedures and practices in the system of care for persons with intellectual disabilities or autism, encourage other departments to do the same and clearly define areas of responsibility in order to use present resources economically; [ 2011, c. 542, Pt. A, §83 (AMD). ]

F. Strive toward having a sufficient number of personnel who are qualified and experienced to provide treatment that is beneficial to persons with intellectual disabilities or autism; and [ 2011, c. 542, Pt. A, §83 (AMD). ]

G. Encourage other departments to provide to persons with intellectual disabilities or autism those services that are required by law, and in particular:

(1) The commissioner shall work actively with the Commissioner of Education to ensure that persons with intellectual disabilities or autism receive appropriate services upon being diagnosed with either disability regardless of the degree of functional limitation or accompanying disabilities;

(2) The commissioner shall advise other departments about standards and policies pertaining to administration, staff, quality of care, quality of treatment, health and safety of clients, rights of clients, community relations and licensing procedures and other areas that affect persons with intellectual disabilities or autism residing in facilities licensed by the department; and

(3) The commissioner shall inform the joint standing committee of the Legislature having jurisdiction over human resources matters about areas where increased cooperation by other departments is necessary in order to improve the delivery of services to persons with intellectual disabilities or autism. [ 2011, c. 542, Pt. A, §83 (AMD). ]

[ 2011, c. 542, Pt. A, §83 (AMD). ]

**3. Plan.** The commissioner shall prepare a plan pursuant to this subsection.

A. The plan must indicate the most effective and efficient manner in which to implement services and programs for persons with intellectual disabilities or autism while safeguarding and respecting the legal and human rights of these persons. [ 2011, c. 542, Pt. A, §83 (AMD). ]

B. The plan must be prepared once every 2 years and must be submitted to the joint standing committee of the Legislature having jurisdiction over health and human services matters by no later than January 15th of every odd-numbered year. [ 2007, c. 356, §16 (NEW); 2007, c. 356, §31 (AFF). ]

C. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall study the plan and make recommendations to the Legislature with respect to funding improvements in programs and services to persons with intellectual disabilities or autism. [ 2011, c. 542, Pt. A, §83 (AMD). ]

D. The plan must describe the system of intellectual disability and autism services in each of the adult developmental service regions and statewide. [ 2011, c. 542, Pt. A, §83 (AMD). ]

E. The plan must include both existing service resources and deficiencies in the system of services. [ 2007, c. 356, §16 (NEW); 2007, c. 356, §31 (AFF). ]

F. The plan must include an assessment of the roles and responsibilities of intellectual disability and autism agencies, human service agencies, health agencies and involved state departments and suggest ways in which these departments and agencies can better cooperate to improve the service systems. [ 2011, c. 542, Pt. A, §83 (AMD) . ]

G. The plan must be made public within the State in such a manner as to facilitate public involvement. [ 2007, c. 356, §16 (NEW); 2007, c. 356, §31 (AFF) . ]

H. The commissioner must ensure that the development of the plan includes the participation of community intellectual disability and autism service providers, consumer and family groups and other interested persons or groups in annual statewide hearings, as well as informal meetings and work sessions. [ 2011, c. 542, Pt. A, §83 (AMD) . ]

I. The commissioner must consider community service needs, relate these identified needs to biennial budget requests and incorporate necessary service initiatives into a comprehensive planning document. [ 2007, c. 356, §16 (NEW); 2007, c. 356, §31 (AFF) . ]

[ 2011, c. 542, Pt. A, §83 (AMD) . ]

**4. General Fund account; Medicaid match; intellectual disability; autism.** The commissioner shall establish a General Fund account to provide the General Fund match for intellectual disability or autism Medicaid eligible services. Any unencumbered balances of General Fund appropriations remaining at the end of each fiscal year must be carried forward to be used for the same purposes.

[ 2011, c. 542, Pt. A, §83 (AMD) . ]

**5. Medicaid savings.** Intermediate care facilities for persons with intellectual disabilities or autism and providers of freestanding day habilitation programs shall submit payment to the department equal to 50% of any Medicaid savings due the State pursuant to the principles of reimbursement, as established under Title 22, sections 3186 and 3187, that are reported in any unaudited cost report for fiscal years ending June 30, 1995 and thereafter. Payment is due with the cost report. After audit, any amount submitted in excess of savings allocated to the facility or provider pursuant to the principles of reimbursement must be returned to the facility or provider. Notwithstanding requirements or conditions contained in the principles of reimbursement, any amount due the State after final audit in excess of savings paid on submission of a cost report must be paid to the State within 90 days following receipt of the department's final audit report.

[ 2011, c. 542, Pt. A, §83 (AMD) . ]

**6. Required reporting by the department.** The department shall make available, on at least an annual basis, a report or reports regarding the services and support provided by the department to persons with intellectual disabilities or autism.

A. The goal of the reporting under this subsection is to provide the public with information on outcome measures established by the department. These measures may include, but are not limited to, whether:

- (1) Persons served by the department are healthy and safe;
- (2) Needs of persons are being met;
- (3) People are included in their communities; and
- (4) The system of care under this section is efficient and effective. [ 2007, c. 356, §16 (NEW); 2007, c. 356, §31 (AFF) . ]

B. At a minimum, the department's report or reports under this subsection must offer information on the following:

- (1) Unmet needs;
- (2) Reportable events;

- (3) Adult protective services;
- (4) Crisis services;
- (5) Persons' and families' satisfaction with services;
- (6) Case management ratios;
- (7) Evaluations of costs of services;
- (8) Grievances;
- (9) Quality assurance and quality improvement efforts; and
- (10) New initiatives. [2007, c. 356, §16 (NEW); 2007, c. 356, §31 (AFF).]

C. A report under this subsection must be provided to the joint standing committee of the Legislature having jurisdiction over health and human services matters. The commissioner or the commissioner's designee shall appear in person before the committee and shall present the report. The report must be posted on the department's publicly accessible website and must be made easily available to persons served by the department, families, guardians, advocates, Legislators and the provider community. [2007, c. 356, §16 (NEW); 2007, c. 356, §31 (AFF).]

[ 2011, c. 542, Pt. A, §83 (AMD) .]

#### SECTION HISTORY

2007, c. 356, §16 (NEW). 2007, c. 356, §31 (AFF). 2011, c. 542, Pt. A, §83 (AMD).

### **§5004. SEXUAL ACTIVITY WITH RECIPIENT OF SERVICES PROHIBITED**

A person who owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services may not engage in a sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, with another person or subject another person to sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, if the other person, not the actor's spouse, is a person with an intellectual disability or autism who receives therapeutic, residential or habilitative services from the organization, program or residence. [2011, c. 542, Pt. A, §84 (AMD).]

#### SECTION HISTORY

1993, c. 687, §9 (NEW). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §103 (COR). 2011, c. 542, Pt. A, §84 (AMD).

### **§5005. OFFICE OF ADVOCACY**

*(REPEALED)*

#### SECTION HISTORY

2007, c. 356, §17 (NEW). 2007, c. 356, §31 (AFF). 2011, c. 542, Pt. A, §§85-90 (AMD). 2011, c. 657, Pt. EE, §4 (RP).

### **§5005-A. ADVOCACY AGENCY**

**1. Agency.** The department shall contract with the agency designated pursuant to Title 5, section 19502, referred to in this section as "the agency," to provide the services described in subsection 2 to individuals with intellectual disabilities or autism.

[ 2011, c. 657, Pt. EE, §5 (NEW) .]

**2. Duties.** The department shall contract with the agency to perform the following duties statewide in at least 5 geographically dispersed locations.

A. The agency shall receive complaints made by or on behalf of individuals with intellectual disabilities or autism and represent their interests in any matter pertaining to their rights and dignity. [ 2013, c. 310, §2 (AMD) . ]

B. The agency shall investigate the claims, grievances and allegations of violations of the rights of individuals with intellectual disabilities or autism. [ 2013, c. 310, §2 (AMD) . ]

C. The agency may pursue legal, administrative and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with intellectual disabilities or autism who are or may be eligible for services administered, licensed or funded by the department, except that the agency may refuse to take action on any complaint that it considers to be trivial, to be moot or to lack merit or for which there is clearly another remedy available. [ 2013, c. 310, §2 (AMD) . ]

D. [ 2013, c. 310, §2 (RP) . ]

E. The agency may refer individuals with intellectual disabilities or autism to other agencies or entities and collaborate with those agencies or entities for the purpose of advocating for the rights and dignity of those individuals. [ 2013, c. 310, §2 (AMD) . ]

F. The agency shall act as an information source regarding the rights of all individuals with intellectual disabilities or autism, keeping itself informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of those individuals and about relevant legal decisions and other developments related to the fields of mental health, intellectual disabilities and autism, both in this State and in other parts of the country. [ 2013, c. 310, §2 (AMD) . ]

G. The agency may make and publish reports necessary to the performance of the duties described in this section. The agency may report its findings to groups outside the department, such as legislative bodies, advisory committees, commissions, law enforcement agencies and the press. At least annually, the agency shall report both in person and in writing to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the department regarding the performance of the duties described in this section. [ 2013, c. 310, §2 (AMD) . ]

H. The agency may monitor the delivery of services, supports and other assistance or residential services or treatment provided to persons with intellectual disabilities or autism for the purpose of ensuring that services, supports and assistance meet the needs of those persons and are delivered in conformity with laws, regulations, rules and other standards regarding quality of care. [ 2013, c. 310, §2 (NEW) . ]

[ 2013, c. 310, §2 (AMD) . ]

**3. Participate in personal planning.** The agency may participate in personal planning when the agency has concerns regarding the rights or dignity of a person with intellectual disabilities or autism. A person has the right to refuse such participation.

[ 2011, c. 657, Pt. EE, §5 (NEW) . ]

**4. Access to files and records.** The agency has access, limited only by the civil service law, to the files, records and personnel of any provider of services, including the files and records of any person with an intellectual disability or autism held by any provider of service, administered, licensed or funded by the department and to all reports and related documents submitted pursuant to section 5604-A.

[ 2013, c. 310, §3 (AMD) . ]

**4-A. Access to individuals.** The agency has access to individuals pursuant to Title 5, section 19506.

[ 2013, c. 310, §4 (NEW) . ]

**5. Confidentiality.** The following provisions govern confidentiality.

A. Any request by or on behalf of an individual with intellectual disabilities or autism for action by the agency and all written records or accounts related to the request are confidential as to the identity of the individual. [2011, c. 657, Pt. EE, §5 (NEW).]

B. The records and accounts under paragraph A may be released only as provided by law. [2011, c. 657, Pt. EE, §5 (NEW).]

C. Records maintained by the agency are the sole property of the individual with intellectual disabilities or autism to whom the records pertain and the agency shall protect the records from loss, damage, tampering or use by unauthorized individuals. The agency shall keep the records confidential and may not release them without written consent from the individual with intellectual disabilities or autism or the individual's guardian. [2013, c. 310, §5 (NEW).]

[2013, c. 310, §5 (AMD).]

SECTION HISTORY

2011, c. 657, Pt. EE, §5 (NEW). 2013, c. 310, §§2-5 (AMD).

**Subchapter 2: PERSONS WITH INTELLECTUAL DISABILITIES OR  
AUTISM; SERVICES HEADING: PL 1995, C. 560, PT. K, §46 (RPR)**

**§5201. DUTIES**

The Department of Health and Human Services is responsible for: [1995, c. 560, Pt. K, §47 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

**1. Institutional programs.**

[2007, c. 356, §31 (AFF); 2007, c. 356, §18 (RP).]

**2. Statewide system.** The planning, promotion, coordination and development of a complete and integrated statewide system of services for adults with intellectual disabilities or autism;

[2011, c. 542, Pt. A, §91 (AMD).]

**3. Liaison.** Serving as liaison, coordinator and consultant to the several state departments in order to develop the statewide system of services for adults with intellectual disabilities or autism;

[2011, c. 542, Pt. A, §91 (AMD).]

**4. Community-based services.** Ensuring that adults with intellectual disabilities or autism residing in community residential facilities, including nursing homes, boarding homes, foster homes, group homes or halfway houses licensed by the Department of Health and Human Services, are provided, insofar as possible, with residential accommodations and access to habilitation services appropriate to their needs;

[2011, c. 542, Pt. A, §91 (AMD).]

**5. Protective and supportive services.** Providing protective and supportive services, in accordance with section 5203, to incapacitated and dependent persons who, with some assistance, are capable of living and functioning in society;

[2007, c. 356, §18 (AMD); 2007, c. 356, §31 (AFF).]



**6. Individual support coordinators.** Providing persons with intellectual disabilities or autism who are eligible for MaineCare services with case management services.

A. Case management services as defined in rules may be provided by qualified staff employed by the department or a contracted agency. [2007, c. 356, §18 (NEW); 2007, c. 356, §31 (AFF).]

B. Unless otherwise specified in personal planning:

(1) Case managers shall maintain at least monthly contact with each person in order to ensure that the quality and availability of services and consumer satisfaction are maintained at a high level; and

(2) Visits to the person's home must occur at least twice a year. [2007, c. 356, §18 (NEW); 2007, c. 356, §31 (AFF).]

C. The department shall ensure that case managers maintain adequate written and electronic records to permit monitoring and accountability. [2007, c. 356, §18 (NEW); 2007, c. 356, §31 (AFF).]

D. The department shall provide sufficient numbers of case managers and supervisors to fulfill the duties specified in this subsection and shall maintain an overall ratio of one case manager to every 35 people in each region. The ratio must be calculated separately for staff employed by the department and by contracted agencies, and this ratio must be maintained for each group; [2007, c. 356, §18 (NEW); 2007, c. 356, §31 (AFF).]

[ 2011, c. 542, Pt. A, §92 (AMD) .]

**7. Crisis and respite.** Provision of crisis and respite services to persons with intellectual disabilities or autism in accordance with section 5206; and

[ 2011, c. 542, Pt. A, §92 (AMD) .]

**8. Quality assurance.** Developing through its comprehensive planning process goals and objectives for the department's quality assurance program.

A. The department shall determine at least annually appropriate quality assurance activities and strategies to achieve the goals and objectives of the program, with the overall purpose of assessing the quality of services and supports, consumer and family satisfaction with such services and supports and the consistency of such services and supports with the principles guiding delivery of services and supports as set forth in section 5610. [2007, c. 356, §18 (NEW); 2007, c. 356, §31 (AFF).]

B. The department shall prepare an annual report of its quality assurance activities and such other periodic reports as it determines appropriate. [2007, c. 356, §18 (NEW); 2007, c. 356, §31 (AFF).]

C. The department shall develop appropriate procedures for formulating and disseminating recommendations emanating from its quality assurance activities and for ensuring follow-up of the implementation of such recommendations. [2007, c. 356, §18 (NEW); 2007, c. 356, §31 (AFF).]

[ 2007, c. 356, §18 (NEW); 2007, c. 356, §31 (AFF) .]

**9. Rules.** The department shall adopt rules to implement this section as necessary. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[ 2007, c. 356, §18 (NEW); 2007, c. 356, §31 (AFF) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 410, §CCC28 (AMD). 1993, c. 738, §E1 (AMD). 1993, c. 738, §E6 (AFF). 1995, c. 560, §K47 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 356, §18 (AMD). 2007, c. 356, §31 (AFF). 2011, c. 542, Pt. A, §§91, 92 (AMD).

## §5202. DIRECTOR (REPEALED)

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 410, §CCC29 (RP).

## §5203. PROTECTIVE AND SUPPORTIVE SERVICES

**1. Department authority.** The department may provide protective or supportive services in response to complaints concerning, and requests for assistance from or on behalf of, all incapacitated persons, under the following conditions.

A. Except for seeking the appointment of a guardian, protective or supportive services may be initiated only:

- (1) With the acquiescence of the incapacitated person; and
- (2) After consultation, insofar as possible, with the family or the guardian of the incapacitated person. [1983, c. 459, §7 (NEW).]

B. The role of the department must be primarily that of supervision and coordination. [1995, c. 560, Pt. K, §48 (AMD).]

[ 1995, c. 560, Pt. K, §48 (AMD) .]

**2. Payment for services.** Payment for services under this section is governed as follows.

A. The department may pay for protective and supportive services to incapacitated persons from its own resources, by mobilizing available community resources or by purchase of services from voluntary or state agencies. [1995, c. 560, Pt. K, §49 (AMD).]

B. To the extent that assets are available to incapacitated persons or wards, the cost of services must be borne by the estate of persons receiving the services. [1993, c. 410, Pt. CCC, §30 (AMD) .]

C. The department may receive as payee any benefits from social security, veterans' administration, railroad retirement or any other like benefits paid on behalf of any incapacitated person, and shall apply those benefits toward the care and treatment of the incapacitated person. [1995, c. 560, Pt. K, §49 (AMD) .]

D. The department may operate an adaptive equipment program. Reimbursement for materials utilized in the manufacture of this equipment may be received and must be retained for use within the adaptive equipment program. [1995, c. 560, Pt. K, §49 (AMD) .]

[ 1995, c. 560, Pt. K, §49 (AMD) .]

**3. Rules.** Adoption, amendment and appeal of rules under this section are governed as follows.

A. The department shall adopt, and may amend or repeal, rules governing the administration of this section, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1995, c. 560, Pt. K, §50 (AMD) .]

B. The department shall hold a public hearing before adopting, amending or repealing the rules, and shall give notice of the public hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1995, c. 560, Pt. K, §50 (AMD).]

[ 1995, c. 560, Pt. K, §50 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 761, §G7 (AMD). 1993, c. 410, §CCC30 (AMD). 1995, c. 560, §§K48-50 (AMD).

### **§5204. SERVICES FOR JUVENILES COMMITTED TO THE MAINE YOUTH CENTER**

**(REPEALED)**

#### SECTION HISTORY

1983, c. 581, §56 (NEW). 1993, c. 410, §CCC31 (AMD). 1993, c. 738, §E6 (AFF). 1993, c. 738, §E2 (RP).

### **§5205. PAYMENT OF BURIAL EXPENSES FOR STATE WARDS**

The department shall pay burial expenses for persons who died while wards of the department as defined in section 5001, subsection 7, and who have no known survivors. The department may first apply to the cost of burial any funds that are available as part of a mortuary trust or any other funds of the ward remaining at the time of the ward's death that are available for this purpose. [1995, c. 560, Pt. K, §51 (AMD) .]

#### SECTION HISTORY

1989, c. 117, (NEW). 1993, c. 410, §CCC32 (AMD). 1995, c. 560, §K51 (AMD) .

### **§5206. CRISIS AND RESPITE SERVICES**

The department shall provide crisis and respite services throughout the State in accordance with this section. [2007, c. 356, §19 (NEW); 2007, c. 356, §31 (AFF).]

**1. Crisis services.** The department shall maintain the capacity to intervene in personal crises that could lead to the loss of the home, program or employment of a person with an intellectual disability or autism. Such capacity must include:

A. Assessment, consultation, planning, training and support for persons with intellectual disabilities or autism and their families or allies both before and after a crisis occurs; [2011, c. 542, Pt. A, §93 (AMD) .]

B. Providing staff support to prevent or respond to a crisis at the site of the crisis when appropriate; [2007, c. 356, §19 (NEW); 2007, c. 356, §31 (AFF).]

C. Ensuring mental health supports when necessary, including access to a licensed mental health provider, inpatient treatment when indicated, psychiatric services and mental health aftercare services; and [2007, c. 356, §19 (NEW); 2007, c. 356, §31 (AFF).]

D. Identifying appropriate professional services for the person in crisis. [2007, c. 356, §19 (NEW); 2007, c. 356, §31 (AFF).]

[ 2011, c. 542, Pt. A, §93 (AMD) .]

**2. Out-of-home services.** The department shall provide out-of-home services in accordance with this subsection.

A. The department shall maintain an adequate capacity to provide out-of-home safety and support by trained staff with appropriate professional backup resources for a person with an intellectual disability or autism experiencing a crisis that cannot be safely managed at the person's residence. [ 2011, c. 542, Pt. A, §93 (AMD) .]

B. Unless otherwise specified in personal planning, crisis intervention services must be provided at a person's home, program or workplace when prevention efforts are not successful. The services must assist with admission to an appropriate out-of-home service in the event that intervention in the home, program or workplace is inappropriate. [ 2007, c. 356, §19 (NEW); 2007, c. 356, §31 (AFF) .]

[ 2011, c. 542, Pt. A, §93 (AMD) .]

**3. Transportation.** The department may not routinely use law enforcement entities to transport persons with intellectual disabilities or autism in crisis. Transportation of persons in crisis by law enforcement personnel may occur only if such transportation has been specifically authorized by the person's guardian or personal planning team or when determined by law enforcement personnel to be necessary to provide for the safety of the person or others.

[ 2011, c. 542, Pt. A, §93 (AMD) .]

**4. Post-crisis review.** A post-crisis review must occur no more than 10 working days after any out-of-home crisis placement. The review must include significant providers and supporters, including appropriate members of the person's planning team. The review must identify possible causes of the person's crisis and must recommend for the personal planning team changes in the person's environment, services and supports to prevent crises in the future.

[ 2007, c. 356, §19 (NEW); 2007, c. 356, §31 (AFF) .]

**5. Respite services.** The department shall maintain and fund a statewide respite system for planned or unplanned respite for persons with intellectual disabilities or autism and their families. The department shall, when appropriate, use the natural supports of a person in the development of respite services. For purposes of this subsection, "natural supports" means those supports provided by persons who are not disability service providers but who provide assistance, contact or companionship to enable a person with an intellectual disability or autism to participate independently in employment or other community settings.

[ 2011, c. 542, Pt. A, §93 (AMD) .]

**6. Information regarding use.** The department shall maintain information regarding use of crisis and respite services sufficient to plan and budget for adequate crisis and respite services. The information must include an assessment of the needs, both met and unmet, for crisis and respite services. The department shall provide information regarding the availability of services under this section and the proper means to obtain them to persons with intellectual disabilities or autism, their parents and allies, providers of services and other interested persons.

[ 2011, c. 542, Pt. A, §93 (AMD) .]

**7. Training.** The department shall offer regular and ongoing information, consultation and training on crisis prevention and intervention and respite services to its own staff, providers and persons with intellectual disabilities or autism and their families, guardians, correspondents and allies.

[ 2011, c. 542, Pt. A, §93 (AMD) .]

SECTION HISTORY

2007, c. 356, §19 (NEW). 2007, c. 356, §31 (AFF). 2011, c. 542, Pt. A, §93 (AMD).

**Subchapter 3: SERVICES FOR PERSONS WITH  
INTELLECTUAL DISABILITIES OR AUTISM**

**Article 1: STATE-OPERATED FACILITIES FOR MENTALLY  
RETARDED PERSONS** HEADING: PL 2005, C. 457, PT. NN, §5 (RP)

**§5401. MAINTENANCE OF FACILITIES**

***(REPEALED)***

SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 503, §6 (AMD). 1995, c. 395, §G14 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 550, §3 (AMD). 2005, c. 457, §NN8 (AFF). 2005, c. 457, §NN5 (RP).

**§5402. PINELAND CENTER**

***(REPEALED)***

SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 776, (AMD). 1993, c. 410, §CCC33 (AMD). 1993, c. 667, §§3-5 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 395, §G15 (RP).

**§5403. AROOSTOOK RESIDENTIAL CENTER**

***(REPEALED)***

SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 410, §CCC34 (AMD). 1993, c. 667, §6 (AMD). 1995, c. 395, §G16 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 560, §K52 (AMD). 2003, c. 20, §G3 (AFF). 2003, c. 20, §G1 (RP).

**§5404. ELIZABETH LEVINSON CENTER**

***(REPEALED)***

SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 503, §7 (RP).

**§5405. FREEPORT TOWNE SQUARE**

***(REPEALED)***

SECTION HISTORY

1995, c. 550, §4 (NEW). 2005, c. 457, §NN8 (AFF). 2005, c. 457, §NN5 (RP).

## Article 2: COMMUNITY-BASED SERVICES

### §5431. PURPOSE

The purpose of this Article is to assist in the establishment and expansion of community-based adult developmental services and programs for persons with intellectual disabilities or autism residing in the community and residing in privately operated residential care facilities. [ 2011, c. 542, Pt. A, §94 (AMD) . ]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 2011, c. 542, Pt. A, §94 (AMD).

### §5432. COMMISSIONER'S DUTIES

The commissioner shall: [ 1983, c. 459, §7 (NEW) . ]

**1. Community participation.** Encourage persons in local communities to participate in the provision of supportive services for persons with intellectual disabilities or autism, so that persons in the community may have a better understanding of the need for those services;

[ 2011, c. 542, Pt. A, §95 (AMD) . ]

**2. Financial assistance.** When offering assistance to community-based programs, follow the procedures set forth in this Article; and

[ 1983, c. 459, §7 (NEW) . ]

**3. Rules.** Adopt rules, according to the Maine Administrative Procedure Act, Title 5, chapter 375, relating to the administration of the services authorized by this article and adopt major substantive rules, according to Title 5, chapter 375, subchapter 2-A, relating to rate setting pursuant to Public Law 2005, chapter 12, Part BBBB and Public Law 2005, chapter 519, Part CCC.

[ 2007, c. 237, §1 (AMD) . ]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 410, §CCC35 (AMD). 2007, c. 237, §1 (AMD). 2011, c. 542, Pt. A, §95 (AMD).

### §5433. COMMISSIONER'S POWERS

The commissioner may: [ 1983, c. 459, §7 (NEW) . ]

**1. Financial aid.** Allocate money for the development of group homes, capital construction, purchase of buildings, supportive services and for other activities, but only those applicants for funds whose programs provide for adequate standards of professional service qualify for funds from the department;

[ 1983, c. 459, §7 (NEW) . ]

**2. Services and programs.** Provide and help finance adult developmental services and programs throughout the State for persons with intellectual disabilities or autism residing in the community and residing in privately owned residential care facilities;

[ 2011, c. 542, Pt. A, §96 (AMD) . ]

**3. Cooperation.** Cooperate with other state agencies, municipalities, other governmental units, unincorporated associations and nonstock corporations in order to provide and help finance services and programs for persons with intellectual disabilities or autism;

[ 2011, c. 542, Pt. A, §97 (AMD) .]

**4. Available funds.** Receive and use for the purpose of this article money appropriated by the State, grants by the Federal Government, gifts from individuals and money from any other sources; and

[ 1985, c. 768, §6 (AMD) .]

**5. Transitional services coordination.** Participate with school administrative units in transition planning for each student with developmental disabilities who will be eligible for services under chapter 5 or 6 who is receiving special education services and who is 16 years of age or older, or 14 years of age if determined appropriate by the student's individualized education program team, and shall assign appropriate staff as a transition contact person and as a member of the transition planning team for each student.

[ 2011, c. 348, §10 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 768, §§6,7 (AMD). 2009, c. 147, §13 (AMD). 2011, c. 348, §10 (AMD). 2011, c. 542, Pt. A, §§96, 97 (AMD).

### §5434. MUNICIPALITIES AND OTHER GOVERNMENTAL UNITS

**1. Authorization.** A municipality or other governmental unit, such as a county, school district or health district, through its local board of health or other town or governmental agency approved by the commissioner, may adopt and carry out a program of adult developmental services established or approved by the commissioner and appropriate money for that purpose.

[ 2011, c. 542, Pt. A, §98 (AMD) .]

**2. Joint ventures.** A municipality or other governmental unit may join with another municipality or governmental unit to carry out such a program.

[ 1983, c. 459, §7 (NEW) .]

**3. Grants.** Upon application to the department by a municipality or other governmental unit, the commissioner may grant to the applicant money to be used for carrying out its adult developmental services, including any necessary capital expenditures or purchase of buildings.

[ 2011, c. 542, Pt. A, §98 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 2011, c. 542, Pt. A, §98 (AMD).

### §5435. NONGOVERNMENTAL UNITS

**1. Department grants.** Upon application to the department by an unincorporated association or nonstock corporation organized for the improvement of community health and welfare, the commissioner may grant to the applicant money to be used for carrying out its adult developmental services, including any necessary capital expenditures or purchase of buildings.

[ 2011, c. 542, Pt. A, §99 (AMD) .]

**2. Department grants.** The department may make grants to nonprofit corporations for amounts that are reasonable, relative to the quantity and quality of services to be provided by the grantee.

A. The department may request a display of effort on the part of the grantee that appropriate local governmental and other funding sources have been sought to assist in the financing of the services for which the department is making the grant. [1995, c. 560, Pt. K, §53 (AMD).]

B. The department shall give consideration to the ability of the municipality or governmental unit to support the adult developmental services, as reflected by the State's evaluation of the component communities. [2011, c. 542, Pt. A, §100 (AMD).]

C. In making grants to unincorporated associations or nonstock corporations, the department shall take into account all income and resources. [1995, c. 560, Pt. K, §53 (AMD).]

[ 2011, c. 542, Pt. A, §100 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 410, §CCC36 (AMD). 1995, c. 560, §K53 (AMD). 2011, c. 542, Pt. A, §§99, 100 (AMD).

## §5436. FEES

**1. Authority.** Fees may be charged for services provided directly to individuals by any program authorized by the department, if the individual is financially able to pay.

[ 1983, c. 459, §7 (NEW) .]

**2. Use.** Fees received by a municipality, governmental unit, unincorporated association or nonstock corporation shall be used by each entity in carrying out its programs approved under this Article.

[ 1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).

## §5437. CONTINGENCY FUND

The department shall establish a contingency fund for use by community-based intermediate care facilities for persons with intellectual disabilities or autism and department clients residing in licensed boarding and foster homes or intermediate care facilities or participating in appropriate day treatment programs. This fund must be used in accordance with the following provisions. [2011, c. 542, Pt. A, §101 (AMD).]

**1. Approval of disbursements.** Disbursements must be approved by the commissioner or the commissioner's designee.

[ 1993, c. 410, Pt. CCC, §38 (AMD) .]

**2. List of approved usages.** The commissioner or the commissioner's designee and representatives of community-based facilities shall develop a list of approved usages of contingency funds.

[ 1993, c. 410, Pt. CCC, §38 (AMD) .]

**3. Approved usages; including.** Approved usages of contingency funds include, but are not limited to, the following:



A. Payment for special client assessment and treatment services not reimbursed through the principles of reimbursement for intermediate care facilities for persons with intellectual disabilities or autism; [2011, c. 542, Pt. A, §102 (AMD).]

B. Payment for special client needs, such as eyeglasses and wheelchairs and nonreimbursable medications; or [1985, c. 486, §2 (NEW).]

C. Payment for special staff needs to ensure appropriate client treatment. [1985, c. 486, §2 (NEW).]

[2011, c. 542, Pt. A, §102 (AMD).]

**4. Disbursement not to be approved.** A disbursement for client needs may not be approved for any service or activity not recommended by a planning team or necessary to comply with regulations. A disbursement may not be made unless evidence is provided that the expense is not reimbursable by the Medicaid Program. It is the intent of the Legislature that the contingency fund established in this section be the funding source of last resort.

[2003, c. 389, §1 (AMD).]

#### SECTION HISTORY

1985, c. 486, §2 (NEW). 1987, c. 349, §H22 (AMD). 1987, c. 769, §A127 (AMD). 1989, c. 502, §A122 (AMD). 1993, c. 410, §§CCC37,38 (AMD). 1995, c. 560, §K54 (AMD). 2003, c. 389, §1 (AMD). 2011, c. 542, Pt. A, §§101, 102 (AMD).

### **§5438. SERVICES FOR ADULTS WITH DIAGNOSES OF INTELLECTUAL DISABILITIES OR OTHER DEVELOPMENTAL DISABILITIES**

To the extent possible using available resources, the department shall provide adults with diagnoses of intellectual disabilities and other developmental disabilities choices from among an array of supports and services, including but not limited to: employment supports, personal supports, day programs and residential services. The department shall pursue appropriate resources for the supports and services needed by adults covered under this chapter. [2011, c. 542, Pt. A, §103 (AMD).]

*§5438. Program of state-funded consumer-directed personal care assistance services*

*(As enacted by PL 2007, c. 240, Pt. OO, §2 is REALLOCATED TO TITLE 34-B, SECTION 5439)*

#### SECTION HISTORY

2007, c. 152, §1 (NEW). 2007, c. 240, Pt. OO, §2 (NEW). 2007, c. 695, Pt. A, §41 (RAL). 2011, c. 542, Pt. A, §103 (AMD).

### **§5439. PROGRAM OF STATE-FUNDED CONSUMER-DIRECTED PERSONAL CARE ASSISTANCE SERVICES**

*(REALLOCATED FROM TITLE 34-B, SECTION 5438)*

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Applicant" means a person who has applied or is applying for services through the program. [2007, c. 695, Pt. A, §41 (RAL).]

B. "Consumer" means a person who has been determined to be eligible under subsection 3. [2007, c. 695, Pt. A, §41 (RAL).]

C. [2011, c. 657, Pt. CC, §1 (RP).]

D. "Program" means the program of state-funded consumer-directed personal care assistance services.  
[2007, c. 695, Pt. A, §41 (RAL).]

[ 2011, c. 657, Pt. CC, §1 (AMD) .]

**2. Program administration.** The commissioner shall administer the program under this section. Within available funds, the commissioner shall ensure that services are delivered in the most comprehensive manner possible and shall strive to maximize the participation of adults with disabilities.

[ 2011, c. 657, Pt. CC, §2 (AMD) .]

**3. Eligibility.** An applicant is eligible for personal care assistance services under the program if the commissioner or the commissioner's designee determines that the person is an adult who:

A. Has a severe disability; [2007, c. 695, Pt. A, §41 (RAL).]

B. Needs personal care assistance services or an attendant at night or both to prevent or remove the adult from inappropriate placement in an institutional setting; and [2007, c. 695, Pt. A, §41 (RAL).]

C. Has no or insufficient personal income or other support from public services, family members or neighbors. [2007, c. 695, Pt. A, §41 (RAL).]

[ 2011, c. 657, Pt. CC, §2 (AMD) .]

**4. Consumer cost sharing.** The commissioner shall establish a sliding scale for consumer cost sharing for services provided under the program. The sliding scale must be based on the net income of the consumer, factoring in the expenses associated with the consumer's disability, and may take assets into consideration.

[ 2011, c. 657, Pt. CC, §2 (AMD) .]

**5. Evaluation teams.** The commissioner shall designate evaluation teams to assist the department with evaluations of applicants and consumers.

A. Each evaluation team must include the applicant or consumer and at least one registered nurse or registered occupational therapist. [2007, c. 695, Pt. A, §41 (RAL).]

B. For each applicant or consumer evaluated by an evaluation team, the team shall assist the department to:

(1) Determine the eligibility of the applicant or consumer for services under the program;

(2) Determine the capability of the applicant or consumer, at the time of evaluation or after skills training provided pursuant to subsection 6, to hire and direct a personal care assistant; and

(3) Reevaluate the applicant or consumer periodically to determine continuing need for the services.

[2011, c. 657, Pt. CC, §3 (AMD).]

[ 2011, c. 657, Pt. CC, §3 (AMD) .]

**6. Skills training.** When sufficient funds are available, the commissioner shall arrange for skills training for consumers in the following areas by the following individuals:

A. Personal health management skills to maximize personal well-being in relation to the consumer's disability, including all aspects of prevention, maintenance and treatment techniques, provided by a registered nurse or other qualified person experienced in the rehabilitation of the severely disabled;  
[2007, c. 695, Pt. A, §41 (RAL).]

B. Personal care assistant management skills, including training in recruiting, hiring and managing a personal care assistant, scheduling and potential problems, provided by a registered nurse or other qualified person experienced in the rehabilitation of the severely disabled; and [2007, c. 695, Pt. A, §41 (RAL).]

C. Functional skills required to maximize the consumer's abilities in activities of daily living, provided by a registered occupational therapist or other qualified person experienced in the rehabilitation of the severely disabled. [2007, c. 695, Pt. A, §41 (RAL).]

[2007, c. 695, Pt. A, §41 (RAL).]

**7. Relatives as providers.** The department may not refuse to pay a relative of a consumer for the provision of services under the program if the relative is qualified to provide the services and payment is not prohibited by law or rule or federal regulation.

[2007, c. 695, Pt. A, §41 (RAL).]

**8. Review of reimbursement rates.** By January 1, 2008 and every 2 years thereafter, the commissioner shall review the rates of reimbursement under the program. As part of the review, the following provisions apply.

A. The commissioner shall:

(1) Ensure the input of consumers, personal assistants and any organization that represents personal assistants regarding providing a livable wage for personal care assistance services. The commissioner may seek input through one or more public hearings or by other means determined reasonable by the commissioner. [2009, c. 369, Pt. A, §34 (AMD).]

B. If the commissioner determines that an increase in one or more of the reimbursement rates is necessary after the review required in this subsection, the commissioner shall adopt rules to accomplish the required rate increase. In making a determination under this subsection, the commissioner shall consider using any savings realized from an expansion of consumer-directed services to increase wages and benefits for personal care assistants. [2007, c. 695, Pt. A, §41 (RAL).]

C. The commissioner shall determine rates of reimbursement that include allowable administrative costs and that use available resources to maximize wages and benefits for personal care assistants and hours of services for consumers. [2007, c. 695, Pt. A, §41 (RAL).]

[2009, c. 369, Pt. A, §34 (AMD).]

**9. Rulemaking.** The commissioner shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A, except that rules regarding consumer cost sharing under subsection 4 are major substantive rules as defined by that subchapter.

[2007, c. 695, Pt. A, §41 (RAL).]

#### SECTION HISTORY

2007, c. 695, Pt. A, §41 (RAL). 2009, c. 369, Pt. A, §34 (AMD). 2011, c. 657, Pt. CC, §§1-3 (AMD).

## Article 3: PROCEDURES

### §5461. DEFINITIONS

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 459, §7 (NEW).]

**1. Advocate.** "Advocate" means a person:

A. Who is familiar with the procedures involved in providing services to persons with intellectual disabilities or autism; and [2011, c. 542, Pt. A, §104 (AMD).]

B. Who is capable of advocating solely on behalf of a person with an intellectual disability or autism. [2011, c. 542, Pt. A, §104 (AMD).]

[ 2011, c. 542, Pt. A, §104 (AMD) .]

**2. Client.** "Client" means a person asking the department for adult developmental services or the person for whom those services are asked.

[ 2011, c. 542, Pt. A, §104 (AMD) .]

**3. Community.** "Community" means the municipality or other area in which the client resides when applying for services.

[ 1983, c. 459, §7 (NEW) .]

**4. Comprehensive evaluation.** "Comprehensive evaluation" means a comprehensive set of evaluations that:

A. Results in the distinguishing of intellectual disabilities and autism from other conditions; [2011, c. 542, Pt. A, §104 (AMD).]

B. Determines the severity of disability resulting from an intellectual disability or autism and other conditions; and [2011, c. 542, Pt. A, §104 (AMD).]

C. Estimates the degree to which the intellectual disability or autism and other conditions can be ameliorated. [2011, c. 542, Pt. A, §104 (AMD).]

[ 2011, c. 542, Pt. A, §104 (AMD) .]

**5. Facility.**

[ 2013, c. 21, §3 (RP) .]

**6. Habilitation.** "Habilitation" means a process by which a person is assisted to acquire and maintain skills which:

A. Enable him to cope more effectively with the demands of his own person and of the environment; [1983, c. 459, §7 (NEW).]

B. Raise the level of his physical, mental and social efficiency; and [1983, c. 459, §7 (NEW) .]

C. Upgrade his sense of well-being. [1983, c. 459, §7 (NEW) .]

[ 1983, c. 459, §7 (NEW) .]

**7. Interdisciplinary team.**

[ 2003, c. 389, §2 (RP) .]

**7-A. Likelihood of serious harm.**

[ 2013, c. 21, §4 (RP) .]

## **8. Person in need of institutional services.**

[ 2013, c. 21, §5 (RP) .]

**8-B. Personal planning process.** "Personal planning process" means a process of planning with a client for the coordination and delivery of supportive and other services through the development of a personal plan or service plan. The type of plan, participants and agenda at the planning meeting must be selected by the client or guardian.

[ 2003, c. 389, §3 (NEW) .]

**8-C. Planning team.** "Planning team" means those persons, including at a minimum the client, the client's guardian and the client's individual support coordinator and others selected by the client or guardian to participate, who develop a personal plan or service plan. The planning team may include family, friends, service providers, correspondents, advocates and others.

[ 2003, c. 389, §3 (NEW) .]

## **9. Prescriptive program plan.**

[ 2003, c. 389, §4 (RP) .]

### **10. Professional.** "Professional" means:

A. A person possessing appropriate licensure, certification or registration to practice his discipline in the community; or [1983, c. 580, §12 (NEW) .]

B. Where licensure, certification or registration is not required, a person possessing a master's degree in the appropriate discipline or a person possessing a bachelor's degree in the appropriate discipline and 3 years' experience in treating persons with intellectual disabilities or autism or 3 years' experience in a related human services field. [2011, c. 542, Pt. A, §107 (AMD) .]

[ 2011, c. 542, Pt. A, §107 (AMD) .]

**10-A. Service plan.** "Service plan" means one type of plan resulting from the personal planning process for the delivery and coordination of specific services to a client when:

A. The client or guardian has chosen this type of plan over a personal plan; or [2003, c. 389, §5 (AMD) .]

B. [2003, c. 389, §5 (AMD) .]

C. [2003, c. 389, §5 (AMD) .]

D. The client has either a single service need or routine service needs. [2003, c. 389, §5 (AMD) .]

[ 2003, c. 389, §5 (AMD) .]

**11. Service agreement.** "Service agreement" means a written form in which the persons designated in section 5471 agree to the type of services and programs for and the manner of providing services to the client.

[ 1983, c. 459, §7 (NEW) .]

## **12. Voluntary admission.**

[ 1983, c. 580, §14 (RP) .]

## SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §§11-14 (AMD). 2003, c. 389, §§2-5 (AMD). 2011, c. 542, Pt. A, §§104-107 (AMD). 2013, c. 21, §§3-5 (AMD).

## §5462. PROCEDURE POLICIES

**1. Steps.** It is the policy of the State that, in order to ensure that persons with intellectual disabilities or autism receive needed services, to the extent possible, the following steps must be taken for each person found by the department to have an intellectual disability or autism and be in need of services:

- A. An assessment of the person's needs; [1983, c. 459, §7 (NEW).]
- B. The development of a personal plan or service plan for the delivery and coordination of services to the person through a personal planning process; and [2013, c. 21, §6 (AMD).]
- C. [2013, c. 21, §7 (RP).]
- D. Insofar as possible, obtaining high quality and suitable services for the person. [1983, c. 459, §7 (NEW).]

[ 2013, c. 21, §§6, 7 (AMD) .]

**2. Persons involved with procedures.** It is the policy of the State that:

- A. To the extent possible, the person with an intellectual disability or autism and the person's guardian or next of kin be involved with the steps specified in subsection 1; and [2011, c. 542, Pt. A, §108 (AMD).]
- B. An advocate be available to the person with an intellectual disability or autism throughout the steps specified in subsection 1. [2011, c. 542, Pt. A, §108 (AMD).]

[ 2011, c. 542, Pt. A, §108 (AMD) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §15 (AMD). 2003, c. 389, §6 (AMD). 2011, c. 542, Pt. A, §108 (AMD). 2013, c. 21, §§6, 7 (AMD).

## §5463. NOTICE

The commissioner shall provide the client, if the client is competent; the client's next of kin or guardian, if any exists; and the client's advocate with timely written notice in advance of procedures and actions to be taken with respect to the development, implementation and assessment of personal plans and service plans. [2003, c. 389, §7 (AMD).]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 2003, c. 389, §7 (AMD).

## §5464. CORRESPONDENCE AND REPORTS

The commissioner shall provide the client, if the client is competent, the client's next of kin or legal guardian, if any exists, and the client's advocate with access to copies of correspondence and reports concerning the client, in accordance with section 1207. [1987, c. 769, Pt. A, §128 (AMD).]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1987, c. 769, §A128 (AMD).

## §5465. RULES

**1. Duty.** The commissioner shall promulgate rules for the effective implementation of this Article.

[ 1983, c. 459, §7 (NEW) . ]

**2. Requirements.** The rules shall include, but need not be limited to, information on:

A. The membership, functions and procedures of the planning teams; [ 2003, c. 389, §8 (AMD) . ]

B. The procedures to be used in developing personal plans and service plans and service agreements; [ 2003, c. 389, §8 (AMD) . ]

C. The rights of clients while in departmental programs; and [ 2013, c. 21, §8 (AMD) . ]

D. The rights and procedures for administrative review if there is dissatisfaction with any step of the process of receiving services specified in this Article, including provisions for the development of regional committees to review any dissatisfaction. [ 2013, c. 21, §8 (AMD) . ]

[ 2013, c. 21, §8 (AMD) . ]

**3. Review.** The joint standing committee of the Legislature having jurisdiction over health and institutional services shall review all rules promulgated by the department pursuant to this Article by no later than March of each year.

[ 1983, c. 459, §7 (NEW) . ]

**4. Public hearing and notice.** The commissioner shall hold at least one public hearing before promulgating these rules and notice of any public hearing shall be given pursuant to the Maine Administrative Procedure Act, Title 5, section 8053.

[ 1983, c. 459, §7 (NEW) . ]

**5. Amendment or repeal.** The commissioner may amend or repeal rules at any time after giving notice and holding a hearing, as prescribed in subsection 4, with respect to the rules amended or repealed.

[ 1983, c. 459, §7 (NEW) . ]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 2003, c. 389, §8 (AMD). 2013, c. 21, §8 (AMD).

## §5466. ADVOCATE

**1. Entitlement.** Each client who receives services under sections 5467 to 5471 is entitled to have access to an advocate.

[ 2013, c. 21, §9 (AMD) . ]

**2. List.** The commissioner shall develop a list of advocates for each region.

[ 1995, c. 560, Pt. K, §55 (AMD) . ]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §16 (AMD). 1993, c. 410, §CCC39 (AMD). 1995, c. 560, §K55 (AMD). 2013, c. 21, §9 (AMD).

## §5467. APPLICATION AND PRELIMINARY PROCEDURES

**1. Application.** An application for adult developmental services, on a form provided by the commissioner, must be initiated at or referred to a regional office of the department. Except for referrals identifying a possible need for adult protective services, the department shall accept only those referrals to which the client or client's guardian has consented.

[ 2011, c. 542, Pt. A, §109 (AMD) .]

**2. Preliminary procedures.** Within 10 work days from the day of the department's receipt of the application and a permission for service form signed by the client or the client's guardian, the department shall:

- A. Determine when a visit to observe the client in the client's current environment or other setting familiar and comfortable to the client will be appropriate and useful; [ 2003, c. 389, §9 (AMD) . ]
- B. Obtain a brief family survey; [ 1983, c. 459, §7 (NEW) . ]
- C. Make a preliminary identification of the client's abilities and needs and of the relevant services presently available to the client; [ 2003, c. 389, §9 (AMD) . ]
- D. Ensure the client's access to an advocate throughout the process of adult developmental services under sections 5467 to 5471; [ 2013, c. 21, §10 (AMD) . ]
- E. Determine what information is needed to establish eligibility; [ 2003, c. 389, §9 (NEW) . ]
- F. Provide services or referral for services to meet singular immediate needs for the client's health and safety; and [ 2003, c. 389, §9 (NEW) . ]
- G. Begin to gather information for a service plan or a personal plan. [ 2003, c. 389, §9 (NEW) . ]

[ 2013, c. 21, §10 (AMD) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §17 (AMD). 1993, c. 410, §CCC40 (AMD). 1995, c. 560, §K56 (AMD). 2003, c. 389, §9 (AMD). 2011, c. 542, Pt. A, §§109, 110 (AMD). 2013, c. 21, §10 (AMD).

## §5468. EVALUATION

After completing the tasks specified in section 5467, subsection 2, the commissioner shall cause a comprehensive evaluation of the client, including a consideration of physical, emotional, social and cognitive factors, to be conducted if a recent comprehensive and informative evaluation is not already available to the department. [ 2003, c. 389, §10 (AMD) . ]

**1. Location.** The comprehensive evaluation shall be conducted locally, except where resources required to carry out the evaluation are not available.

[ 1983, c. 459, §7 (NEW) .]

**2. Comprehensive evaluation.** The comprehensive evaluation must be conducted by a person who is a licensed physician, licensed clinical psychologist or licensed psychological examiner and who has had training and experience in the diagnosis and treatment of persons with intellectual disabilities or autism.

[ 2011, c. 542, Pt. A, §111 (AMD) .]



### 3. Evaluation of child.

[ 1985, c. 503, §8 (RP) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §§18,19 (AMD). 1985, c. 503, §8 (AMD). 2003, c. 389, §10 (AMD). 2011, c. 542, Pt. A, §111 (AMD).

## §5469. REPORT

Within 90 days of the day of the application made under section 5467, the department shall obtain a report of the comprehensive evaluation made under section 5468, which must state specifically whether or not the client has an intellectual disability or autism. [2011, c. 542, Pt. A, §112 (AMD).]

**1. Client without an intellectual disability or autism.** If the comprehensive evaluation concludes that the client does not have an intellectual disability or autism, the department shall deny the application for services, care and treatment, but shall make appropriate referrals in cases where clear needs of the client exist.

[ 2011, c. 542, Pt. A, §112 (AMD) .]

**2. Client with an intellectual disability or autism.** If the comprehensive evaluation concludes that the client has an intellectual disability or autism and is in need of services:

A. The department, through the regional office, shall determine the client's case management status and develop a personal plan or service plan; and [2003, c. 389, §11 (AMD).]

B. The department, through the planning team, shall develop a personal plan or service plan for the client within 45 days of the date of the determination of eligibility. Implementation of the plan is governed by section 5471, subsection 4. [2003, c. 389, §11 (AMD).]

[ 2011, c. 542, Pt. A, §112 (AMD) .]

**3. Preschool child.** If the report of the comprehensive evaluation concludes that a child, aged 0 to 5 years, is developmentally delayed and is in need of infant development services or other early intervention services:

A. The department, through the regional office, shall develop a personal plan or service plan, or both; and [2003, c. 389, §12 (AMD).]

B. If a personal plan is to be developed, the department, through the planning team, shall develop and begin to implement a personal plan for the client within 60 days of the application made under section 5467. [2003, c. 389, §12 (AMD).]

[ 2003, c. 389, §12 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §20 (RPR). 1995, c. 560, §K57 (AMD). 2003, c. 388, §1 (AMD). 2003, c. 389, §§11,12 (AMD). 2011, c. 542, Pt. A, §112 (AMD).

## §5470. PRESCRIPTIVE PROGRAM PLAN

*(REPEALED)*

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §21 (AMD). 2003, c. 389, §13 (RP).

## §5470-A. PERSONAL PLANNING PROCESS

(REPEALED)

### SECTION HISTORY

2003, c. 389, §14 (NEW). 2007, c. 356, §31 (AFF). 2007, c. 356, §20 (RP).

## §5470-B. PERSONAL PLANNING

**1. Right to personal planning.** Every adult with an intellectual disability or autism who is eligible for services must be provided the opportunity to engage in a personal planning process in which the needs and desires of the person are articulated and identified.

[ 2011, c. 542, Pt. A, §113 (AMD) .]

**2. Process.** The personal planning opportunities afforded to a person with an intellectual disability or autism pursuant to subsection 1 must:

A. Be understandable to that person and in plain language and, if that person is deaf or nonverbal, uses sign language or speaks another language, the process must include qualified interpreters; [ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF). ]

B. Focus on the choices made by that person; [ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF). ]

C. Reflect and support the goals and aspirations of that person; [ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF). ]

D. Be developed at the direction of that person and include people whom the person chooses to participate. The planning process must minimally include the person, the person's guardian, if any, the correspondent, if any, and the person's case manager; [ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF). ]

E. Be flexible enough to change as new opportunities arise; [ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF). ]

F. Be offered to that person at least annually or on a schedule established through the planning process and be reviewed according to a specified schedule and by a person designated for monitoring; [ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF). ]

G. Include all of the needs and desires of that person without respect to whether those desires are reasonably achievable or the needs are presently capable of being addressed; and [ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF). ]

H. Include a provision for ensuring the satisfaction of that person with the quality of the plan and the supports that the person receives. [ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF). ]

[ 2011, c. 542, Pt. A, §113 (AMD) .]

**3. Action plans and unmet needs.** The ongoing personal planning for a person with an intellectual disability or autism must include an action plan that describes the services to be provided, the process of providing the services and who is responsible for overseeing the provision of the services. In cases where resources required to address identified needs or desires are not available, the action plan must identify interim measures based on available resources that address the needs or desires as nearly as possible and identify steps toward meeting the person's actual identified needs.

Unmet needs must be documented continually, collated annually and used for appropriate development activities on a regional and statewide basis.

[ 2011, c. 542, Pt. A, §113 (AMD) .]

**4. Review of personal plans.** The person with an intellectual disability or autism or another member of the planning team may initiate a review of the person's personal plan when needed or desired.

A. A review under this subsection must be done by meeting or by other means sufficient to address the needed or desired changes. The review must include the person, the person's guardian, if any, and the person's case manager. Invitations to participate may also be sent to others who may be anticipated to assist the person in pursuing articulated needs and desires unless the person or a private guardian objects. [2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF).]

B. Events that could lead to the loss of the person's home, job or program and events defined in a departmental rule or in the person's plan must lead to a plan review. [2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF).]

[ 2011, c. 542, Pt. A, §113 (AMD) .]

**5. Information from planning process.** During personal planning, the department shall develop and record information about a person's needs, identify anticipated needs without regard to service availability, define necessary support services, recommend optimal courses of action and include plans for the active and continued exploration of suitable program or service alternatives based on the person's needs.

[ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF) .]

**6. Implementation of personal plan.** As part of its implementation, the personal plan must be agreed to by the person or the person's legal guardian. The department shall assist persons with the needs identified by their planning process to obtain housing, employment or other meaningful occupation, medical and other professional therapeutic services, recreational and vocational opportunities and educational services at the earliest possible time, insofar as resources permit.

[ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF) .]

**7. Records.** The department shall maintain records of personal plans developed under this section.

A. The department shall maintain adequate written and electronic records of the development and implementation of personal plans to permit monitoring and accountability. [2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF).]

B. [2013, c. 310, §6 (RP).]

[ 2013, c. 310, §6 (AMD) .]

**8. Training.** The department shall provide training in personal planning.

A. The department shall prepare and maintain a comprehensive manual describing the procedures to be followed in implementing a personal planning process. [2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF).]

B. The department shall ensure the provision of regular and ongoing training in personal planning to persons with intellectual disabilities or autism and their families, guardians, correspondents and allies as well as its own staff and providers. The department shall regularly provide persons with intellectual disabilities or autism and their families, guardians and allies with informational materials regarding personal planning. [2011, c. 542, Pt. A, §114 (AMD).]

[ 2011, c. 542, Pt. A, §114 (AMD) .]

**9. Rules.** The department is authorized to adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2007, c. 356, §21 (NEW); 2007, c. 356, §31 (AFF) .]

#### SECTION HISTORY

2007, c. 356, §21 (NEW). 2007, c. 356, §31 (AFF). 2011, c. 542, Pt. A, §§113, 114 (AMD). 2011, c. 657, Pt. EE, §6 (AMD). 2013, c. 310, §6 (AMD).

## §5471. SERVICE AGREEMENTS

**1. Service agreement required.** Each personal plan or service plan must be carried out pursuant to a written service agreement.

[ 2003, c. 389, §15 (AMD) .]

**2. Signatures.** Each service agreement must be signed and dated by at least:

A. The client, if the client is able; [2003, c. 389, §15 (AMD) .]

B. The client's guardian or next of kin, if that person exists and is available; [1983, c. 459, §7 (NEW) .]

C. A client advocate, if the client has no guardian; [1983, c. 459, §7 (NEW) .]

D. The individual support coordinator of the planning team that developed the personal plan or service plan for the client; and [2013, c. 21, §11 (AMD) .]

E. [2013, c. 21, §12 (RP) .]

F. [2013, c. 21, §13 (RP) .]

G. The chief administrative officer, or the chief administrative officer's agent, of other public or private agencies or groups that agree to provide services to the client. [2003, c. 389, §15 (AMD) .]

[ 2013, c. 21, §§11-13 (AMD) .]

**3. Contents.** Each service agreement must include at least the following information.

A. It must specify the respective responsibilities, where applicable, of the client, the family or guardian of the client, the regional office and each public and private agency that intends to provide services to the client. [2013, c. 21, §14 (AMD) .]

B. It must identify by job classification or other description each individual who is responsible for carrying out each part of the service plan or personal plan. [2003, c. 389, §15 (AMD) .]

C. [2003, c. 389, §15 (RP) .]

[ 2013, c. 21, §14 (AMD) .]

**4. Implementation of service plan or personal plan.** Implementation of a service plan or personal plan is governed as follows.

A. No part of a service plan or personal plan may be implemented until each person required to sign the service agreement under subsection 2 has signed it. [2013, c. 21, §15 (AMD) .]

B. Any existing service plan or personal plan is considered to be in effect until all persons required to sign under subsection 2 have signed the new service agreement. [2003, c. 389, §15 (AMD) .]

C. A service plan or personal plan may not be in effect longer than one year and 2 weeks from the day on which the last person signed the service agreement for the plan. [2003, c. 389, §15 (AMD).]

[ 2013, c. 21, §15 (AMD) .]

#### **5. Review.**

[ 2003, c. 389, §15 (RP) .]

**6. Amendment.** Any major changes in a client's service plan or personal plan may occur only after the service agreement has been amended and signed by the persons specified in subsection 2.

[ 2003, c. 389, §15 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1995, c. 560, §K58 (AMD). 2003, c. 389, §15 (AMD). 2013, c. 21, §§11-15 (AMD).

### **§5472. PREADMISSION VISIT**

**(REPEALED)**

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 2013, c. 21, §16 (RP).

### **§5473. VOLUNTARY ADMISSIONS**

**(REPEALED)**

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 410, §CCC41 (AMD). 1995, c. 395, §G17 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 560, §K59 (AMD). 2003, c. 389, §§16,17 (AMD). 2013, c. 21, §17 (RP).

### **§5474. INVOLUNTARY ADMISSIONS**

**(REPEALED)**

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 503, §9 (AMD). 2011, c. 542, Pt. A, §115 (AMD). 2013, c. 21, §18 (RP).

### **§5475. JUDICIAL CERTIFICATION PROCEDURES**

**(REPEALED)**

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §22 (AMD). 1985, c. 397, §§1-2 (AMD). 1985, c. 503, §10 (AMD). RR 1995, c. 2, §88 (COR). 2001, c. 354, §3 (AMD). 2003, c. 389, §18 (AMD). 2003, c. 689, §B7 (REV). 2007, c. 539, Pt. N, §§68, 69 (AMD). 2011, c. 542, Pt. A, §116 (AMD). 2013, c. 21, §19 (RP).

### **§5476. JUDICIAL COMMITMENT**

**(REPEALED)**

SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §23 (RPR). 1983, c. 763, (AMD).  
2003, c. 389, §19 (AMD). 2011, c. 542, Pt. A, §117 (AMD). 2013, c. 21,  
§20 (RP).

**§5477. EMERGENCY PROCEDURES**

*(REPEALED)*

SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §§24,25 (AMD). 1987, c. 736, §55  
(AMD). 2011, c. 542, Pt. A, §§118, 119 (AMD). 2013, c. 21, §21 (RP).

**§5478. CONTINUATION OF TREATMENT IN A FACILITY**

*(REPEALED)*

SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §26 (RPR). 2003, c. 389, §20  
(AMD). 2011, c. 542, Pt. A, §120 (AMD). 2013, c. 21, §22 (RP).

**§5479. POST-ADMISSION RESPONSIBILITIES OF THE DEPARTMENT**

*(REPEALED)*

SECTION HISTORY

1983, c. 459, §7 (NEW). 2003, c. 389, §21 (AMD). 2013, c. 21, §23 (RP).

**§5480. CLIENT'S RIGHT TO LEAVE FACILITY**

*(REPEALED)*

SECTION HISTORY

1983, c. 459, §7 (NEW). 1983, c. 580, §27 (AMD). 2003, c. 389, §22  
(AMD). 2013, c. 21, §24 (RP).

**§5481. RATES FOR FEE-FOR-SERVICE PROGRAMS**

*(REPEALED)*

SECTION HISTORY

1995, c. 685, §1 (NEW). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6  
(REV). 2007, c. 539, Pt. Y, §1 (RP).

**Subchapter 4: RIGHTS OF PERSONS WITH INTELLECTUAL  
DISABILITIES OR AUTISM HEADING: PL 1993, C. 326, §1 (RPR)**

**§5601. DEFINITIONS**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 459, §7 (NEW).]

**1. Client.**

[ 1993, c. 326, §2 (RP) .]

**1-A. Ally.** "Ally" means an individual who a person trusts to provide assistance.

[ 2007, c. 356, §22 (NEW); 2007, c. 356, §31 (AFF) .]

**1-B. Behavior management.** "Behavior management" means systematic strategies to prevent the occurrence of challenging behavior or to keep the person or others safe by reducing the factors that lead to challenging behavior or otherwise limiting the person's ability to engage in challenging behavior.

[ 2011, c. 186, Pt. A, §2 (NEW) .]

**1-C. Behavior modification.** "Behavior modification" means teaching strategies, positive support and other interventions to support a person to learn alternatives to challenging behavior.

[ 2011, c. 186, Pt. A, §3 (NEW) .]

## **2. Day facility.**

[ 2011, c. 186, Pt. A, §4 (RP) .]

**3. Express and informed consent.** "Express and informed consent" means consent voluntarily given with sufficient knowledge and comprehension of the subject matter involved so as to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

[ 1983, c. 459, §7 (NEW) .]

**4. Habilitation.** "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable him to cope with the demands of his own person and environment, to raise the level of his physical, mental and social efficiency and to upgrade his sense of well-being, including, but not limited to, programs of formal, structured education and treatment.

[ 1983, c. 459, §7 (NEW) .]

**5. Normalization principle.** "Normalization principle" means the principle of assisting the person with an intellectual disability or autism to obtain an existence as close to normal as possible and making available to that person patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

[ 2011, c. 542, Pt. A, §121 (AMD) .]

**5-A. Person receiving services.** "Person receiving services" means a person with an intellectual disability or autism receiving services from the department or from an agency or facility licensed or funded to provide services to persons with intellectual disabilities or autism except those presently serving sentences for crime.

[ 2011, c. 542, Pt. A, §122 (AMD) .]

**5-B. Provider.** "Provider" means an entity, organization or individual providing services to an adult with an intellectual disability or autism, funded in whole or in part or licensed or certified by the department.

[ 2011, c. 542, Pt. A, §123 (AMD) .]

## **6. Residential facility.**

[ 2011, c. 186, Pt. A, §7 (RP) .]

**6-A. Restraint.** "Restraint" means a mechanism or action that limits or controls a person's voluntary movement, deprives a person of the use of all or part of the person's body or maintains a person in an area against the person's will by another person's physical presence or coercion. "Restraint" does not include a prescribed therapeutic device or intervention or a safety device or practice.

[ 2011, c. 186, Pt. A, §8 (NEW) .]

**6-B. Safety device or practice.** "Safety device or practice" means a device or practice that has the effect of reducing or inhibiting a person's movement in any way but whose purpose is to maintain or ensure the safety of the person. "Safety device or practice" includes but is not limited to implements, garments, gates, barriers, locks or locking apparatuses, alarms, helmets, masks, gloves, straps, belts or protective gloves whose purpose is to maintain the safety of the person.

[ 2011, c. 186, Pt. A, §9 (NEW) .]

**7. Seclusion.** "Seclusion" means the solitary, involuntary confinement for any period of time of a person receiving services in a room or specific area from which egress is denied by a locking mechanism or barrier.

[ 2011, c. 186, Pt. A, §10 (AMD) .]

**7-A. Supports.** "Supports" means actions or assistance that empowers a person with an intellectual disability or autism to carry out life activities, build relationships and learn the skills necessary to meet the person's needs and desires.

[ 2011, c. 542, Pt. A, §124 (AMD) .]

**7-B. Therapeutic device or intervention.** "Therapeutic device or intervention" means an apparatus or activity prescribed by a qualified professional to achieve proper body position, balance or alignment or an action or apparatus that is designed to enhance sensory integration.

[ 2011, c. 186, Pt. A, §12 (NEW) .]

**8. Treatment.** "Treatment" means the prevention or amelioration of physical and mental disabilities or illness of a person or any actions or services designed to assist the person to maximize the person's independence and potential.

[ 2011, c. 186, Pt. A, §13 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 326, §§2-7 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 356, §22 (AMD). 2007, c. 356, §31 (AFF). 2011, c. 186, Pt. A, §§2-13 (AMD). 2011, c. 542, Pt. A, §§121-124 (AMD).

## §5602. PURPOSE

It is the intent of the Legislature to guarantee individual dignity, liberty, pursuit of happiness and the protection of the civil and legal rights of persons with intellectual disabilities or autism and to articulate rights of persons with intellectual disabilities or autism, so that these rights may be exercised and protected. [2011, c. 542, Pt. A, §125 (AMD).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 326, §8 (AMD). 2011, c. 542, Pt. A, §125 (AMD).



## §5603. ENTITLEMENT

Each person with an intellectual disability or autism is entitled to the rights enjoyed by citizens of the State and of the United States, unless some of these rights have been limited or suspended by a court of competent jurisdiction. [2011, c. 542, Pt. A, §126 (AMD).]

**1. Person committed to the commissioner.** The rights and basic protections set out in section 5605 of a person with an intellectual disability or autism who is committed to the commissioner as not criminally responsible pursuant to Title 15, section 103 or as incompetent to stand trial pursuant to Title 15, section 101-D may be limited or suspended only if the commissioner submits to the applicable court a written treatment plan that specifies each limitation of a right or basic protection and the treatment plan has been approved by the court.

[ 2011, c. 542, Pt. A, §126 (AMD) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 326, §8 (AMD). 2011, c. 186, Pt. A, §14 (AMD). 2011, c. 542, Pt. A, §126 (AMD).

## §5604. PROTECTION

The Legislature finds and declares that the rights of persons with intellectual disabilities or autism can be protected best under a system of services that operates according to the principles of normalization and full inclusion and that the State's system of services must operate according to these principles with the goals of: [2011, c. 542, Pt. A, §127 (AMD).]

**1. Community-based services.** Continuing the development of community-based services that provide reasonable alternatives to institutionalization in settings that are least restrictive to the person receiving services;

[ 2007, c. 356, §23 (AMD); 2007, c. 356, §31 (AFF) .]

**2. Independence and productivity.** Providing habilitation, education and other training to persons with intellectual disabilities or autism that will maximize each person's potential to lead an independent and productive life and that will afford opportunities for full inclusion into the community where each person lives; and

[ 2011, c. 542, Pt. A, §127 (AMD) .]

**3. Grievance right.** Providing a person with an intellectual disability or autism with the right to appeal a decision regarding actions or inactions by the department that affects the person's life. The department shall establish in rule a process for hearing such grievances pursuant to Title 22-A, section 206, subsection 4. The rules must contain strict time frames for the resolution of grievances. The rules may provide for resolution of grievances through mediation.

A. The department shall provide easily accessible and regular notice of the grievance process to persons with intellectual disabilities or autism served by the department. This notice must be included in informational materials provided to such persons, as well as to guardians, families, correspondents and allies. Notice of the right to appeal must be prominently displayed in regional offices and on the department's publicly accessible website and must be readily available from provider agencies. Notice of the right to appeal must be included in all substantive correspondence regarding personal planning. Written notice of the right to appeal must also be provided when there is a denial or reduction of services or supports to persons served by the department. All notices and information regarding the grievance process must be written in language that is plain and understandable and must include the address and telephone number of the protection and advocacy agency designated pursuant to Title 5, section 19502. [2011, c. 657, Pt. EE, §7 (AMD).]

B. The department must make available a one-page form that enables a person with an intellectual disability or autism to file a grievance. A grievance may also be filed through an oral request. If a grievance is filed through an oral request, the person receiving the grievance shall reduce the grievance to writing using a one-page form made available by the department. [2011, c. 542, Pt. A, §127 (AMD).]

C. The department shall offer regular training in the grievance process for persons served by the department, their families, guardians and allies and department and service provider staff. [2007, c. 356, §23 (NEW); 2007, c. 356, §31 (AFF).]

D. If an appeal proceeds to a hearing, the hearing officer's decision constitutes final agency action for the purposes of Rule 80C of the Maine Rules of Civil Procedure unless final decision-making authority has been reserved by the commissioner. If the commissioner makes the final decision and modifies or rejects the hearing officer's recommended decision, the commissioner must state in writing the basis for the commissioner's decision. When the commissioner rejects or modifies a hearing officer's factual findings or makes additional factual findings, the commissioner shall articulate the evidentiary basis for such rejection or modification with appropriate references to the record. The commissioner shall give substantial deference to a hearing officer's determinations on matters of credibility relating to testimony that was heard by the hearing officer, and when rejecting or modifying such determinations of credibility, the commissioner shall state with particularity the reasons with appropriate references to evidence in the record. In the event the commissioner fails to issue a written final decision within 30 days of the date of the recommended decision, the recommended decision of the hearing officer is deemed the final decision of the commissioner. [2007, c. 356, §23 (NEW); 2007, c. 356, §31 (AFF).]

[ 2011, c. 657, Pt. EE, §7 (AMD) .]

#### 4. Rules.

[ 2011, c. 186, Pt. A, §16 (RP) .]

The rights and basic protections of a person with an intellectual disability or autism under section 5605 may not be restricted or waived by that person's guardian, except as permitted by rules adopted pursuant to this section. [2011, c. 542, Pt. A, §127 (AMD).]

The department has authority to adopt rules to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 186, Pt. A, §17 (NEW).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 326, §8 (AMD). 2007, c. 356, §23 (AMD). 2007, c. 356, §31 (AFF). RR 2009, c. 1, §23 (COR). 2011, c. 186, Pt. A, §§15-17 (AMD). 2011, c. 542, Pt. A, §127 (AMD). 2011, c. 657, Pt. EE, §7 (AMD).

### §5604-A. DUTY TO REPORT INCIDENTS; ADULT PROTECTIVE SERVICES ACT AND RIGHTS VIOLATIONS

**1. Report incident.** A person with knowledge about an incident related to client care, including client-to-client assault, staff-to-client assault, use of seclusion or excessive use of mechanical or chemical restraint, incidents stemming from questionable psychiatric and medical practice or any other alleged abuse or neglect, shall immediately report the details of that incident pursuant to policies and procedures established by the department in rules.

[ 2007, c. 356, §24 (NEW); 2007, c. 356, §31 (AFF) .]

**2. Maintain reporting system.** The department shall maintain a reportable event and adult protective services system that provides for receiving reports of alleged incidents, prioritizing such reports, assigning reports for investigation by qualified investigators, reviewing the adequacy of the investigations, making recommendations for preventive and corrective actions as appropriate and substantiating allegations against individuals who have been found under the Adult Protective Services Act to have abused, neglected or exploited persons with intellectual disabilities or autism. The department shall fully establish the reportable event and adult protective services system through rulemaking.

[ 2011, c. 542, Pt. A, §128 (AMD) .]

**3. Violation.** All persons with knowledge of an alleged violation of the rights of an individual with an intellectual disability or autism as set out in section 5605 shall promptly report the details of the alleged violation to the advocacy agency designated pursuant to Title 5, section 19502 as set forth in department rules.

[ 2011, c. 657, Pt. EE, §8 (AMD) .]

**4. Rules.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2007, c. 356, §24 (NEW); 2007, c. 356, §31 (AFF) .]

#### SECTION HISTORY

2007, c. 356, §24 (NEW). 2007, c. 356, §31 (AFF). 2011, c. 542, Pt. A, §128 (AMD). 2011, c. 657, Pt. EE, §8 (AMD).

## §5605. RIGHTS AND BASIC PROTECTIONS OF A PERSON WITH AN INTELLECTUAL DISABILITY OR AUTISM

A person with an intellectual disability or autism is entitled to the following rights and basic protections.  
[2011, c. 542, Pt. A, §129 (AMD).]

**1. Humane treatment.** A person with an intellectual disability or autism is entitled to dignity, privacy and humane treatment.

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**2. Practice of religion.** A person with an intellectual disability or autism is entitled to religious freedom and practice without any restriction or forced infringement on that person's right to religious preference and practice.

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**3. Communications.** A person with an intellectual disability or autism is entitled to private communications.

A. A person with an intellectual disability or autism is entitled to receive, send and mail sealed, unopened correspondence. A person who is a provider may not delay, hold or censor any incoming or outgoing correspondence of any person with an intellectual disability or autism, nor may any such correspondence be opened without the consent of the person or the person's legal guardian. [ 2011, c. 542, Pt. A, §129 (AMD).]

B. A person with an intellectual disability or autism is entitled to reasonable opportunities for telephone and Internet communication. [2011, c. 542, Pt. A, §129 (AMD).]

C. A person with an intellectual disability or autism is entitled to an unrestricted right to visitations during reasonable hours unless this right has been restricted pursuant to rules adopted pursuant to section 5604. [2011, c. 542, Pt. A, §129 (AMD).]

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**4. Work.** A person with an intellectual disability or autism engaged in work programs that require compliance with state and federal wage and hour laws is entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor.

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**5. Vote.** A person with an intellectual disability or autism may not be denied the right to vote.

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**6. Personal property.** A person with an intellectual disability or autism is entitled to the possession and use of that person's own clothing, personal effects and money, except when temporary custody of clothing or personal effects by a provider is necessary to protect the person or others from imminent injury or unless this right has been restricted pursuant to rules adopted pursuant to section 5604.

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**7. Nutrition.** A person with an intellectual disability or autism is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons.

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**8. Medical care.** A person with an intellectual disability or autism is entitled to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability, and medical treatment must be consistent with the accepted standards of medical practice in the community, unless the religion of the person with an intellectual disability or autism so prohibits.

A. Medication may be administered only at the written order of a physician. [1983, c. 459, §7 (NEW) .]

B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities. [1983, c. 459, §7 (NEW) .]

C. Daily notation of medication received by each person with an intellectual disability or autism must be kept in the records of the person with an intellectual disability or autism. [2011, c. 542, Pt. A, §129 (AMD) .]

D. Periodically, but no less frequently than every 6 months, the drug regimen of each person with an intellectual disability or autism must be reviewed by a physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. [2011, c. 542, Pt. A, §129 (AMD) .]

E. All prescriptions must have a termination date. [1993, c. 326, §9 (AMD) .]

F. [2011, c. 186, Pt. A, §24 (RP) .]

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent must be obtained from the person with an intellectual disability or autism, unless the person has been found to be legally incompetent, in which case the person's guardian may consent.

(1) Before making a treatment or surgical decision, the person must be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The person or, if legally incompetent, that person's guardian may withdraw express and informed consent at any time, with or without cause, before treatment or surgery. [2011, c. 542, Pt. A, §129 (AMD).]

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any person with an intellectual disability or autism who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the person. [2011, c. 542, Pt. A, §129 (AMD).]

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any person with an intellectual disability or autism who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the person. [2011, c. 542, Pt. A, §129 (AMD).]

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**9. Sterilization.** A person with an intellectual disability or autism may not be sterilized, except in accordance with chapter 7.

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**10. Social activity.** A person with an intellectual disability or autism is entitled to opportunities for behavioral and leisure time activities that include social interaction in the community, as set out in section 5610. This right may be waived or restricted only under the rules adopted pursuant to section 5604 or pursuant to a treatment plan approved pursuant to section 5603, subsection 1.

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**11. Physical exercise.** A person with an intellectual disability or autism is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**12. Discipline.** Discipline of persons with intellectual disabilities or autism is governed as follows.

A. [2011, c. 186, Pt. A, §26 (RP).]

B. Corporal punishment or any form of inhumane discipline is not permitted. [1983, c. 459, §7 (NEW).]

C. Seclusion as a form of discipline is not permitted. [2011, c. 186, Pt. A, §26 (AMD).]

D. [1993, c. 326, §9 (RP).]

E. A provider of residential services may establish house rules in a residential unit owned or operated by the provider. A person receiving services who resides in the unit is entitled to participate, as appropriate, in the formulation of the house rules. A house rule must be uniformly applied to all residents of the residential unit where the rules apply. A copy of the house rules must be posted in a residential unit where the rules apply and a copy of the rules must be given to all residents who receive services and, if any resident is under guardianship, to the guardian of the person receiving services. [2011, c. 186, Pt. A, §26 (NEW).]

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**13. Behavioral support, modification and management.** Behavior modification and behavior management of and supports for a person with an intellectual disability or autism who is not a patient in a psychiatric unit of an acute hospital or a psychiatric hospital as defined in section 3801, subsection 7-B are governed as follows.

A. A person with an intellectual disability or autism may not be subjected to a behavior modification or behavior management program to eliminate dangerous or maladaptive behavior without first being assessed by a physician to determine if the proposed program is medically contraindicated and that the dangerous or maladaptive behavior could not be better treated medically. [2011, c. 542, Pt. A, §129 (AMD).]

A-1. Support programs may contain both behavior modification and behavior management components. [2011, c. 186, Pt. A, §27 (AMD).]

A-2. The following practices are prohibited as elements of behavior modification or behavior management programs:

- (1) Seclusion;
- (2) Corporal punishment;
- (3) Actions or language intended to humble, dehumanize or degrade the person;
- (4) Restraints that do not conform to rules adopted pursuant to this section;
- (5) Totally enclosed cribs or beds; and
- (6) Painful stimuli. [2011, c. 186, Pt. A, §27 (NEW).]

B. Behavior modification and behavior management programs may be used only to correct behavior more harmful to the person than the program and only:

- (1) On the recommendation of the person's personal planning team;
- (2) For an adult 18 years of age or older, with the approval, following a case-by-case review, of a review team composed of a representative from the department, a representative from the advocacy agency designated pursuant to Title 5, section 19502 and a representative designated by the Maine Developmental Services Oversight and Advisory Board. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation; and
- (3) For a child under 18 years of age, with the approval, following a case-by-case review, of a review team composed of a representative from the advocacy agency designated pursuant to Title 5, section 19502, a team leader of the department's children's services division and the children's services medical director or the director's designee. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation. Until rules are adopted by the department to govern behavioral treatment reviews for children, the team may not approve techniques any more aversive or intrusive than are permitted in rules adopted by the Secretary of the United States Department of Health and Human Services regarding treatment of children and youth in nonmedical community-based facilities funded under the Medicaid program. [2013, c. 310, §7 (AMD).]

C. [2011, c. 186, Pt. A, §27 (RP).]

[ 2013, c. 500, §1 (AMD) .]

#### **14. Physical restraints.**

[ 2007, c. 573, §1 (RP) .]

**14-A. Restraints.** A person with an intellectual disability or autism is entitled to be free from restraint unless:

A. The restraint is a short-term step to protect the person from imminent injury to that person or others; or [2011, c. 186, Pt. A, §28 (AMD).]

B. The restraint has been approved as a behavior management program in accordance with this section. [2011, c. 186, Pt. A, §28 (AMD).]

A restraint may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services. A restraint may impose only the least possible restriction consistent with its purpose and must be removed as soon as the threat of imminent injury ends. A restraint may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety.

Daily records of the use of restraints identified in paragraph A must be kept, which may be accomplished by meeting reportable event requirements.

Daily records of the use of restraints identified in paragraph B must be kept, and a summary of the daily records pertaining to the person must be made available for review by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule determined by the team. The review by the personal planning team may occur no less frequently than quarterly. The summary of the daily records must state the type of restraint used, the duration of the use and the reasons for the use. A monthly summary of all daily records pertaining to all persons must be relayed to the advocacy agency designated pursuant to Title 5, section 19502.

[ 2011, c. 657, Pt. EE, §10 (AMD) .]

#### **14-B. Mechanical supports.**

[ 2011, c. 186, Pt. A, §29 (RP) .]

#### **14-C. Safety devices.**

[ 2011, c. 186, Pt. A, §30 (RP) .]

**14-D. Reimbursement provided.** Notwithstanding any other provision of law, the department shall provide reimbursement within available resources for durable medical equipment that provides a safe sleeping environment for individuals under 16 years of age if:

A. The durable medical equipment is necessary to correct or ameliorate a behavioral health condition; [2009, c. 100, §1 (NEW).]

B. The durable medical equipment is the least restrictive alternative for the treatment of the behavioral health condition; [2009, c. 100, §1 (NEW).]

C. The durable medical equipment is approved on a case-by-case basis by a review team composed of the same representatives as the team conducting children's behavioral treatment reviews under subsection 13, paragraph B, subparagraph (3); and [2009, c. 100, §1 (NEW).]

D. The department determines that the durable medical equipment is cost-effective in comparison to the provision of other covered services or equipment that can sufficiently correct or ameliorate the behavioral health condition. [2009, c. 100, §1 (NEW).]

The department may adopt rules as necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2009, c. 100, §1 (NEW) .]

**15. Records.** All records of persons receiving services must remain confidential as provided in section 1207.

A. The person with an intellectual disability or autism or, if the person is incompetent, a parent or guardian is entitled to have access to the records upon request. [2011, c. 542, Pt. A, §129 (AMD) .]

B. The commissioner is entitled to have access to the records of a provider if necessary to carry out the statutory functions of the commissioner's office. [2011, c. 186, Pt. A, §31 (AMD) .]

[ 2011, c. 542, Pt. A, §129 (AMD) .]

**16. Therapeutic devices or interventions.** Therapeutic devices or interventions must be prescriptively designed by a qualified professional and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use of therapeutic devices or interventions. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 186, Pt. A, §32 (NEW) .]

**17. Safety devices and practices.** A safety device or practice must be prescribed by a physician. A safety device must be designed and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use and approval of safety devices or practices. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 186, Pt. A, §33 (NEW) .]

The department may adopt rules as necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 186, Pt. A, §34 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1987, c. 769, §A129 (AMD). 1993, c. 326, §9 (AMD). 2001, c. 245, §§1-4 (AMD). 2003, c. 368, §§1,2 (AMD). 2003, c. 564, §§1-3 (AMD). 2007, c. 356, §25 (AMD). 2007, c. 356, §31 (AFF). 2007, c. 573, §§1-4 (AMD). 2007, c. 695, Pt. D, §3 (AFF). 2009, c. 100, §1 (AMD). 2011, c. 186, Pt. A, §§18-34 (AMD). 2011, c. 542, Pt. A, §129 (AMD). 2011, c. 657, Pt. EE, §§9, 10 (AMD). 2013, c. 310, §7 (AMD). 2013, c. 500, §1 (AMD).

## §5606. VIOLATIONS

**1. Reportable events.** Any alleged violation of the rights of a person receiving services must be reported immediately to the advocacy agency designated pursuant to Title 5, section 19502, referred to in this subsection as "the agency," and to the Attorney General's office.

A. The agency shall investigate each alleged violation pursuant to section 5005-A. [2013, c. 310, §8 (AMD) .]



B. The agency may independently pursue a complaint or may pursue administrative, legal and other appropriate remedies on behalf of an individual with intellectual disabilities or autism. The agency may refuse to take action on any alleged violation that it considers to be trivial, to be moot or to lack merit or for which there is clearly another remedy available or may refer an individual who is the subject of an alleged violation to another agency or entity and collaborate with that agency or entity for the purpose of advocating for the rights and dignity of that individual. [2013, c. 310, §8 (AMD).]

[ 2013, c. 310, §8 (AMD) .]

**2. Civil liability.** Any person who violates or abuses any rights or privileges of persons receiving services granted by this subchapter is liable for damages as determined by law.

A. Civil damages may be awarded for negligent or intentional violations of this subchapter. [1983, c. 459, §7 (NEW).]

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a person receiving services is a defense to a civil action under this subchapter. [1993, c. 326, §10 (AMD).]

[ 1993, c. 326, §10 (AMD) .]

**3. Prohibited acts; penalty; defense.** A person is guilty of violation of the rights of a person with an intellectual disability or autism who is receiving services if that person intentionally violates or abuses any rights or privileges of persons receiving services granted by this subchapter.

A. Violation of the rights of a person with an intellectual disability or autism who is receiving services is a Class E crime. [2011, c. 542, Pt. A, §130 (AMD).]

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a person receiving services is a defense to prosecution under this subchapter. [1993, c. 326, §10 (AMD).]

[ 2011, c. 542, Pt. A, §130 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 326, §10 (AMD). 2005, c. 457, §003 (AMD). 2005, c. 457, §005 (AFF). 2005, c. 519, §RR3 (AMD). 2005, c. 519, §RR4 (AFF). 2007, c. 356, §26 (AMD). 2007, c. 356, §31 (AFF). 2011, c. 542, Pt. A, §130 (AMD). 2011, c. 657, Pt. EE, §11 (AMD). 2013, c. 310, §8 (AMD).

### §5607. NOTICE OF RIGHTS

The commissioner shall provide a written copy of this subchapter and of section 1207 to each person receiving services and, if the person receiving services has been adjudged incompetent, to the parent or guardian of the person receiving services. [1993, c. 326, §11 (AMD).]

**1. Prompt notification.** Each person receiving services must be promptly informed in clear language of that person's legal rights.

[ 1993, c. 326, §11 (AMD) .]

**2. Posting requirement.** A copy of this subchapter must be posted by each provider.

[ 2011, c. 186, Pt. A, §35 (AMD) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 1987, c. 769, §A130 (AMD). 1993, c. 326, §11 (AMD). 2011, c. 186, Pt. A, §35 (AMD).

## §5608. RESIDENTIAL COUNCIL

Upon request of a person receiving services, a residential provider shall offer an opportunity to a person receiving services from the provider to organize a residential council to hear the views and represent the interests of persons receiving services from the provider. [2011, c. 186, Pt. A, §36 (AMD).]

**1. Composition.** The residential council of the persons receiving services must be composed of residents elected by other residents. The residential council may include allies elected by the residents.

[ 2011, c. 186, Pt. A, §36 (AMD) .]

**2. Duties.** The residential council shall work closely with the department and the advocacy agency designated pursuant to Title 5, section 19502 to promote the interests and welfare of all persons receiving services from the provider.

[ 2011, c. 657, Pt. EE, §12 (AMD) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 326, §12 (AMD). 1993, c. 410, §CCC42 (AMD). 2011, c. 186, Pt. A, §36 (AMD). 2011, c. 657, Pt. EE, §12 (AMD).

## §5609. HABILITATION AND VOCATIONAL REHABILITATION SERVICES

**1. Habilitation services.** The department and the Department of Labor, through the Office of Rehabilitation Services, shall provide, to the extent of the resources available, for those habilitation and vocational rehabilitation services, defined in Title 26, section 1411-A, subsection 6, and any other service, including, but not limited to, supported employment, including work in rehabilitation facilities and work centers, as defined in Title 5, chapter 155, subchapter 2; job coaching; transportation, recreational and leisure services; and respite or day programs designed in consultation with a planning team in order to make available to persons receiving services those services that are otherwise not obtainable, in the following order of priority:

A. Those persons receiving services who are living at home or in unsubsidized foster care who are between 20 and 26 years of age and are not receiving any day program; and [1993, c. 410, Pt. CCC, §43 (AMD).]

B. All other persons receiving services who are between 20 and 26 years of age and are not receiving an appropriate day program. [1993, c. 410, Pt. CCC, §43 (AMD).]

C. [1993, c. 326, §13 (RP).]

All persons receiving services who are served under this program prior to their 26th birthday must be allowed to continue to receive services through the voucher system established by subsection 2.

For purposes of this section, a planning team includes the person receiving services and a member of the person's family or the guardian of the person receiving services.

[ 2003, c. 389, §23 (AMD) .]

**2. Payment for service.** The department shall establish a voucher system to allow the planning team to incorporate only those services determined critical and otherwise unavailable into a program, including work, habilitation and other services designated in subsection 1, when appropriate. The department shall establish a limit on the amount of transitional services available to persons receiving services eligible for services under this section.

[ 2003, c. 389, §24 (AMD) . ]

**3. Rules.** The department shall adopt rules in accordance with the Maine Administrative Procedure Act to establish a transitional program under subsections 1 and 2.

[ 1995, c. 560, Pt. K, §62 (AMD) . ]

#### SECTION HISTORY

1987, c. 837, §1 (NEW). 1989, c. 328, (AMD). 1993, c. 326, §13 (AMD). 1993, c. 410, §CCC43 (AMD). 1993, c. 708, §A12 (AMD). 1995, c. 560, §§K60-62 (AMD). 2003, c. 389, §§23,24 (AMD).

### §5610. SERVICE DELIVERY

**1. Guiding service delivery.** The delivery of services by providers of services and the department to persons with intellectual disabilities and autism is guided by the following.

A. Persons with intellectual disabilities or autism have the same rights as all citizens, including the rights to live, work and participate in the life of the community. [2011, c. 542, Pt. A, §131 (AMD) . ]

B. Community inclusion is achieved by connecting persons and their families, whenever possible, to local and generic supports within the community and by the use of residential services that are small and integrated into the community. [2007, c. 356, §27 (NEW); 2007, c. 356, §31 (AFF) . ]

C. Real work for real pay for persons in integrated settings in the community is the cornerstone of all vocational and employment services. [2007, c. 356, §27 (NEW); 2007, c. 356, §31 (AFF) . ]

D. Service delivery to persons with intellectual disabilities and autism is based on the following fundamentals:

- (1) Maximizing the growth and development of the person and inclusion in the community;
- (2) Maximizing the person's control over that person's life;
- (3) Supporting the person in that person's own home;
- (4) Acknowledging and enhancing the role of the family, as appropriate, as the primary and most natural caregiver; and
- (5) Planning for the delivery of community services that:
  - (a) Promotes a high quality of life;
  - (b) Is based on ongoing individualized assessment of the strengths, needs and preferences of the person and the strengths of that person's family; and

(c) Identifies and considers connections in other areas of the person's life, including but not limited to family, allies, friends, work, recreation and spirituality. [2011, c. 542, Pt. A, §131 (AMD).]

[ 2011, c. 542, Pt. A, §131 (AMD) .]

#### SECTION HISTORY

2007, c. 356, §27 (NEW). 2007, c. 356, §31 (AFF). 2011, c. 542, Pt. A, §131 (AMD).

## §5611. COMPLAINTS

A complaint may be filed by the agency designated pursuant to Title 5, section 19502. The complaint procedure may be used when the agency knows or has reason to believe that the practices, procedures or policies of any agency licensed, funded or contracted by the department to provide services violate the rights of individuals with intellectual disabilities or autism pursuant to section 5605. [2013, c. 310, §9 (NEW) .]

**1. Allegations of employee misconduct.** A complaint that includes allegations of employee misconduct must be processed, but no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with applicable personnel rules, policies and labor contract provisions.

[ 2013, c. 310, §9 (NEW) .]

**2. Complaints arising in community.** A complaint arising in the community must be addressed to the executive director of the provider agency.

[ 2013, c. 310, §9 (NEW) .]

**3. Response to be provided within 5 business days.** A formal written response, including a statement of the remedial action to be taken, if any, must be provided to the complainant within 5 business days of receipt by the person listed in subsection 2.

[ 2013, c. 310, §9 (NEW) .]

**4. Decision appealable to director.** A decision described in subsection 3 is appealable within 5 business days to the director of the department's office of aging and disability services or the director's designee, who shall provide a formal written response, including a statement of the remedial action to be taken, if any, to the complainant within 5 business days.

[ 2013, c. 310, §9 (NEW) .]

**5. Decision appealable to commissioner.** A decision of the director or the director's designee pursuant to subsection 4 is appealable within 5 business days to the commissioner, who shall provide a formal written response, including a statement of the remedial action to be taken, if any, to the complainant within 5 business days. This written response constitutes the department's final agency action on the matter.

[ 2013, c. 310, §9 (NEW) .]

#### SECTION HISTORY

2013, c. 310, §9 (NEW).

## Chapter 6: AUTISM

### Subchapter 1: AUTISM ACT OF 1984

#### §6001. LEGISLATIVE INTENT

It is the intent of the Legislature that social and habilitative services directed at persons who have been diagnosed as having autism or other pervasive developmental disorders be developed and planned for, to the extent that resources permit, by the Department of Health and Human Services. [2011, c. 542, Pt. A, §132 (AMD).]

##### SECTION HISTORY

1983, c. 824, §U (NEW). 1993, c. 410, §CCC44 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 542, Pt. A, §132 (AMD).

#### §6002. AUTISM DEFINED

**1. Generally.** Autism refers to a developmental disorder characterized by a lack of responsiveness to other people, gross impairment in communicative skills and unusual responses to various aspects of the environment, all usually developing within the first 30 months of age.

[2007, c. 309, §1 (NEW).]

**2. Adult with autism.** An adult with autism is an adult who:

A. Has received a diagnosis that falls within the category of Pervasive Developmental Disorders, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association and as may be updated by rule adopted by the department in response to updates or changes in the Diagnostic and Statistical Manual of Mental Disorders; and [2007, c. 309, §1 (NEW).]

B. Has been assessed as having an adaptive behavior score at a level of functional impairment as determined by the department. [2007, c. 309, §1 (NEW).]

[2007, c. 309, §1 (NEW).]

##### SECTION HISTORY

1983, c. 824, §U (NEW). 2007, c. 309, §1 (RPR).

#### §6003. RULES

The department shall adopt rules governing the definition of autism and other pervasive developmental disorders in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1995, c. 560, Pt. K, §63 (AMD).]

##### SECTION HISTORY

1983, c. 824, §U (NEW). 1993, c. 410, §CCC44 (AMD). 1995, c. 560, §K63 (AMD).

#### §6004. REPORT

The commissioner shall submit a report in coordination with the Commissioner of Education on efforts to plan for and develop social and habilitative services for persons who have autism and other pervasive developmental disorders to the Governor and the joint standing committees of the Legislature having

jurisdiction over health and institutional services matters and educational and cultural affairs. This report must be submitted no later than January 15th of every odd-numbered year and must be submitted in conjunction with the plan required by section 5003-A, subsection 3. [2011, c. 348, §11 (AMD).]

The committee shall study the report and make recommendations to the Legislature with respect to improving the quality and availability of services to children and adults who have pervasive developmental disorders. [1983, c. 824, Pt. U, (NEW).]

#### SECTION HISTORY

1983, c. 824, §U (NEW). 1993, c. 410, §CCC45 (AMD). 1995, c. 560, §K64 (AMD). 2007, c. 356, §28 (AMD). 2007, c. 356, §31 (AFF). 2011, c. 348, §11 (AMD).

### Subchapter 2: CHILDREN'S SERVICES HEADING: PL 1995, C. 560, PT. K, §65 (RPR)

## §6201. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1985, c. 503, §12 (NEW).]

#### 1. Bureau.

[ 1995, c. 560, Pt. K, §66 (RP) .]

#### 2. Child in need of treatment. "Child in need of treatment" means:

A. [1993, c. 738, Pt. E, §6 (AFF); 1993, c. 738, Pt. E, §3 (RP).]

B. A child 17 years of age or younger who has treatment needs related to mental illness, an intellectual disability, autism, other developmental disabilities or emotional or behavioral needs that are not under current statutory authority of other state agencies; or [2011, c. 542, Pt. A, §133 (AMD).]

C. A person 18 years of age or older and under 21 years of age who has treatment needs related to mental illness, an intellectual disability, autism, other developmental disabilities or emotional or behavioral needs if the department has determined that it is in the interest of that person to receive treatment through the department. [2011, c. 542, Pt. A, §133 (AMD).]

[ 2011, c. 542, Pt. A, §133 (AMD) .]

**2-A. Respite care.** "Respite care" means temporary care-giving to a child or adult for the purpose of relieving that person's family or another primary care-giver. Persons who have completed the training program for respite care providers through the department are eligible for any insurance provided to family foster home providers pursuant to Title 5, section 1728-A. In any action for damages against a respite care provider insured pursuant to Title 5, section 1728-A, for damages covered under that policy, the claims for and award of those damages, including costs and interest, may not exceed \$300,000 for any and all claims arising out of a single occurrence. When the amount awarded to or settled for multiple claimants exceeds the limit imposed by this section, any party may apply to the Superior Court for the county in which the governmental entity is located to allocate to each claimant that claimant's equitable share of the total, limited as required by this section. Any award by the court in excess of the maximum liability limit must be automatically abated by operation of this section to the maximum limit of liability. Nothing in this subsection may be construed to make respite care a state activity nor may it expand in any way the liability of the State or respite care provider.

[ 2003, c. 2, §104 (COR) .]

**3. Treatment.** "Treatment" means the provision of services to children in need of treatment and their families, the services consisting primarily of:

A. Psychiatric, psychological, counseling, developmental and other therapeutic modalities; and  
[1985, c. 503, §12 (NEW).]

B. Social, interpersonal and other living skills, related supportive services and habilitative training.  
[1985, c. 503, §12 (NEW).]

[ 1985, c. 503, §12 (NEW) .]

#### SECTION HISTORY

1985, c. 503, §12 (NEW). 1987, c. 778, §3 (AMD). 1993, c. 738, §E3 (AMD). 1993, c. 738, §E6 (AFF). 1995, c. 560, §§K66-68 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §104 (COR). 2011, c. 542, Pt. A, §133 (AMD).

### §6202. POLICY

**1. Services.** It is the policy of the State to provide an efficient, coordinated statewide system of services to children in need of treatment and their families, including a comprehensive system of family support services, insofar as resources permit.

[ 1987, c. 349, §23 (AMD) .]

**2. Spiritual treatment.** Nothing in this subchapter may replace or limit the right of any child to treatment in accordance with a recognized religious method of healing, if the treatment is requested by the person or by his parent or guardian.

[ 1985, c. 503, §12 (NEW) .]

**3. Setting.** It is the policy of the State that the setting for the services described in this subchapter shall, consistent with the availability of appropriate resources:

A. Impose the fewest possible restrictions on the liberty of children in need of treatment; and [1985, c. 503, §12 (NEW).]

B. Be as close as possible to the patterns and norms of the mainstream of society, recognizing regional, cultural and ethnic characteristics. [1985, c. 503, §12 (NEW).]

[ 1985, c. 503, §12 (NEW) .]

**4. Other agencies.** Nothing in this subchapter may be construed to constrain or impair the Department of Corrections, Department of Education, Department of Health and Human Services or any other state agency in carrying out statutorily mandated responsibilities to children and their families or to alter or diminish any services, benefits or entitlements received by virtue of the statutory responsibilities.

[ 1989, c. 700, Pt. A, §165 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

#### SECTION HISTORY

1985, c. 503, §12 (NEW). 1987, c. 349, §H23 (AMD). 1989, c. 700, §A165 (AMD). 2003, c. 689, §B6 (REV).

## §6203. COMMISSIONER'S DUTIES

**1. System.** In order to facilitate the development and operation of a coordinated, statewide system of services to children in need of treatment and their families, the commissioner shall:

- A. Provide a decentralized administrative structure for the provision of services to children in need of treatment and their families; [1985, c. 503, §12 (NEW).]
- B. Work toward the provision of normalized services through the establishment of in-home, community-based, family-oriented programs for the child in need of treatment. If treatment in an out-of-home or out-of-community setting becomes necessary, it should be in the least restrictive setting consistent with needs of the child, commensurate with the resources available to the bureau and in coordination with services and resources of other state agencies serving children and their families; [1985, c. 503, §12 (NEW).]
- C. Continue coordination and linkage with other agencies, programs and systems that serve children and their families on a state, regional and local level, so as to encourage effective and efficient procedures and practice in the delivery of services to children in need of treatment and their families; [1985, c. 503, §12 (NEW).]
- D. Place a high priority on continued participation with the Department of Education in preventive intervention services to families of children in need of treatment; [2003, c. 2, §105 (COR).]
- E. Strive to ensure that all services and programs are adequately staffed by persons appropriately qualified by training and experience; [1985, c. 503, §12 (NEW).]
- F. Publicize the availability of services to children in need of treatment to ensure that these services are accessible to the greatest possible number of children and their families; [1985, c. 503, §12 (NEW).]
- G. Ensure that all children in need of treatment and their families are notified of their rights to advocacy services available in this State; [1987, c. 349, Pt. H, §24 (AMD).]
- H. Ensure that rules are adopted that specify the procedures by which a parent or guardian of a child in need of treatment may appeal decisions made relative to services provided by the bureau; [1991, c. 452, §2 (AMD).]
- I. Provide a comprehensive system of support services, including respite care, to families with children in need of treatment; [1991, c. 452, §3 (AMD).]
- J. Require that any new contract for mental health services be awarded through a request-for-proposal procedure and any contract for mental health services of \$500,000 per year or more that is renewed be awarded through a request-for-proposal procedure at least every 8 years, except for the following.
  - (1) Renewal contracts for a provider are not subject to the request-for-proposal procedure requirement if all contracts executed with that provider under this subsection are performance-based contracts.
  - (2) Notwithstanding subparagraph (1), the department shall subject a contract to a request-for-proposal procedure when necessary to comply with paragraph L; [1993, c. 624, §3 (AMD).]
- K. Establish a procedure to obtain assistance and advice from consumers of mental health services regarding the selection of contractors when requests for proposals are issued for mental health services; and [1993, c. 624, §3 (AMD).]
- L. Require that a contract under this subsection that is subject to renewal be awarded through a request-for-proposal procedure if the department determines that:
  - (1) The provider has breached the existing contract;
  - (2) The provider has failed to correct deficiencies cited by the department;



(3) The provider is inefficient or ineffective in the delivery of services and is unable or unwilling to improve its performance within a reasonable time; or

(4) The provider can not or will not respond to a reconfiguration of service delivery requested by the department. [1993, c. 624, §4 (NEW).]

[ 2003, c. 2, §105 (COR) .]

**2. Plan.** The commissioner shall serve as an advocate for children in need of treatment; shall monitor, review and evaluate not less than annually the allocation and adequacy of services provided by the department; and shall prepare and maintain a plan that meets the following criteria.

A. The plan must indicate the most effective and efficient manner in which to implement services and programs for children in need of treatment and their families, while safeguarding and respecting the legal and human rights of these children and families. [1995, c. 560, Pt. K, §70 (AMD).]

B. The plan must specifically indicate how gaps in services for children in need of treatment and their families can best be met. [1995, c. 560, Pt. K, §70 (AMD).]

C. The plan must establish a procedure for setting priorities among the various services required by children in need of treatment and their families, in cooperation with other agencies of State Government that provide services to children and families, including, but not limited to, the Department of Corrections and Department of Education. [2003, c. 2, §106 (COR).]

D. The plan must specifically indicate the department's efforts in ensuring that services to children in need of treatment and their families are effectively coordinated with existing resources and procedures of all the department's institutions and programs. [1995, c. 560, Pt. K, §70 (AMD).]

E. The plan must be prepared in the even-numbered years for submission to the joint standing committee of the Legislature having jurisdiction over human resources and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs no later than January 30th of the odd-numbered years. [1995, c. 560, Pt. K, §70 (AMD).]

F. The plan must ensure that children with divergent treatment needs are not inappropriately mixed while in residence at state-operated facilities for children with special needs. [1995, c. 560, Pt. K, §70 (AMD).]

G. The plan must indicate the State's progress in ensuring the development of an array of family support services to enable families to more adequately maintain their children in need of treatment in their natural homes and communities. [1995, c. 560, Pt. K, §70 (AMD).]

[ 2003, c. 2, §106 (COR) .]

#### SECTION HISTORY

1985, c. 503, §12 (NEW). 1987, c. 349, §§H24-26 (AMD). 1989, c. 700, §§A166,167 (AMD). 1991, c. 452, §§2-4 (AMD). 1993, c. 624, §§3,4 (AMD). 1995, c. 560, §§K69,70 (AMD). RR 2003, c. 2, §§105,106 (COR).

## §6204. DEPARTMENT DUTIES

**1. Duties.** The department shall:

A. Strengthen the capacity of families, natural helping networks, self-help groups and other community resources to support and serve children in need of treatment; [1985, c. 503, §12 (NEW).]

B. Facilitate the planning, promoting, coordination, delivery and evaluation of a complete and integrated statewide system of services to children in need of treatment and their families; and [1985, c. 503, §12 (NEW).]

C. Support those services appropriate to children in need of treatment and their families, including, but not necessarily limited to, the following:

- (1) Advocacy;
- (2) Assessment and diagnosis;
- (3) Child development;
- (4) Consultation and education;
- (5) Crisis intervention;
- (6) Family guidance and counseling;
- (7) Preventive intervention;
- (8) Professional consultation and training;
- (9) Respite care and other family support services; and
- (10) Treatment. [1987, c. 349, Pt. H, §27 (AMD).]

[ 1995, c. 560, Pt. K, §71 (AMD) .]

**2. Powers.** The department may perform the duties described in subsection 1 and may provide services to children in need of treatment through state-operated facilities and programs or through contracts and grants to public and private agencies. In all cases, the department shall ensure that services are provided in the least restrictive setting consistent with the child's needs, commensurate with the resources available to the department and in coordination with services and resources of other state agencies serving children and families. Emphasis must be placed on maintaining each child in the child's natural home or in an alternative placement within the community whenever possible.

[ 1995, c. 560, Pt. K, §71 (AMD) .]

**2-A. Improvement and expansion of day treatment services for emotionally handicapped children.**

The department shall work cooperatively with the Department of Corrections and Department of Education to improve and expand day treatment programs for emotionally handicapped school-age children so that they and their families may receive necessary, appropriate and coordinated therapeutic and educational services in home and community settings, reducing the likelihood that out-of-home or residential treatment placements will be required. The department shall license these programs pursuant to sections 3603 and 3606. The Department of Education shall approve these programs pursuant to Title 20-A, chapter 206. The 2 departments shall jointly develop standards to ensure a consistent high quality throughout the State.

[ 2003, c. 2, §107 (COR) .]

**3. Appointment of director.**

[ 1995, c. 560, Pt. K, §71 (RP) .]

**4. Qualifications of director.**

[ 1995, c. 560, Pt. K, §71 (RP) .]

**5. Term.**

[ 1995, c. 560, Pt. K, §71 (RP) .]

## **6. Duties and powers of director.**

[ 1995, c. 560, Pt. K, §71 (RP) .]

### SECTION HISTORY

1985, c. 503, §12 (NEW). 1985, c. 777, §2 (AMD). 1987, c. 349, §H27 (AMD). 1989, c. 700, §A168 (AMD). 1995, c. 560, §K71 (AMD). RR 2003, c. 2, §107 (COR).

## **§6205. SERVICES FOR JUVENILES COMMITTED TO THE YOUTH DEVELOPMENT CENTERS**

**1. Department authority.** The department may provide consultation services to any juvenile with an intellectual disability or autism committed to the Long Creek Youth Development Center or the Mountain View Youth Development Center if those services are requested by the Commissioner of Corrections or the commissioner's designee. Consultation services may include participation by appropriate department professionals on the Classification Committee of the Long Creek Youth Development Center or the Classification Committee of the Mountain View Youth Development Center in order to assist in the design of individual treatment plans to provide habilitation, education and skill training to juveniles with an intellectual disability or autism in residence at the Long Creek Youth Development Center or the Mountain View Youth Development Center.

[ 2011, c. 542, Pt. A, §134 (AMD) .]

**2. Support services.** Whenever a program has been designed for a juvenile with an intellectual disability or autism by the Classification Committee of the Long Creek Youth Development Center or the Classification Committee of the Mountain View Youth Development Center and the classification committee has included participation by the department professionals, the department shall provide, insofar as possible, support services to implement that program.

[ 2011, c. 542, Pt. A, §134 (AMD) .]

**3. Case management.** The department may provide case management services to juveniles with intellectual disabilities or autism who are released from the Long Creek Youth Development Center or the Mountain View Youth Development Center.

[ 2011, c. 542, Pt. A, §134 (AMD) .]

### SECTION HISTORY

1993, c. 738, §E4 (NEW). 1993, c. 738, §E6 (AFF). 1995, c. 560, §K72 (AMD). 1999, c. 401, §J4 (AMD). 2001, c. 439, §G6 (AMD). 2003, c. 706, §A14 (AMD). 2011, c. 542, Pt. A, §134 (AMD).

## **Subchapter 3: ADVISORY COMMITTEE**

## **§6241. MAINE ADVISORY COMMITTEE ON CHILDREN WITH SPECIAL NEEDS (REPEALED)**

### SECTION HISTORY

1985, c. 503, §12 (NEW). 1989, c. 503, §B164 (AMD). 1993, c. 360, §§F1,2 (AMD). 1995, c. 560, §§K73,74 (AMD). 1999, c. 668, §126 (RP).

## **§6242. NONLAPSING FUNDS**

Any unencumbered balance of General Fund appropriations remaining at the end of each fiscal year in the Mental Health Services - Child Medicaid account may not lapse but must be carried forward to be used for the same purposes. [1995, c. 665, Pt. N, §2 (NEW).]

### SECTION HISTORY

1995, c. 665, §N2 (NEW).

## **Subchapter 4: STATE-OPERATED FACILITIES FOR CHILDREN WITH SPECIAL NEEDS**

## **§6251. MAINTENANCE OF FACILITIES**

*(REPEALED)*

### SECTION HISTORY

1985, c. 503, §12 (NEW). 1995, c. 560, §K75 (AMD). 2007, c. 539, Pt. N, §70 (AMD). MRSA T. 34-B, §6251 (RP).

## **§6252. ELIZABETH LEVINSON CENTER**

*(REPEALED)*

### SECTION HISTORY

1985, c. 503, §12 (NEW). 1995, c. 560, §K76 (AMD). 2003, c. 389, §25 (AMD). 2007, c. 539, Pt. N, §71 (AMD). MRSA T. 34-B, §6252, sub-§6 (RP).

## **§6253. MILITARY AND NAVAL CHILDREN'S HOME**

*(REPEALED)*

### SECTION HISTORY

1985, c. 503, §12 (NEW). 1989, c. 749, §1 (RP).

## **§6253-A. BATH CHILDREN'S HOME**

*(REPEALED)*

### SECTION HISTORY

1989, c. 749, §§2,3 (NEW). 1991, c. 567, §2 (AMD). 1993, c. 360, §§H3,4 (AMD). 1993, c. 427, §5 (AMD). 1995, c. 560, §K77 (AMD). MRSA T.34B ., §6253A/7 (AMD).

## **§6254. SERVICES IN INSTITUTIONS**

*(REPEALED)*

### SECTION HISTORY

1985, c. 503, §12 (NEW). 1995, c. 395, §G18 (AMD). 1995, c. 395, §G20 (AFF). 1995, c. 560, §§K78-80 (AMD). 1997, c. 393, §A40 (RP).

## Chapter 7: DUE PROCESS IN STERILIZATION ACT OF 1982

### §7001. SHORT TITLE

This chapter may be cited as the "Due Process in Sterilization Act of 1982." [1983, c. 459, §7 (NEW).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).

### §7002. LEGISLATIVE INTENT

The Legislature finds and declares that sterilization procedures are generally irreversible and represent potentially permanent and highly significant consequences for the patient involved. The Legislature recognizes that certain legal safeguards are necessary to prevent indiscriminate and unnecessary sterilization and to assure equal access to desired medical procedures for all Maine citizens. [1983, c. 459, §7 (NEW).]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).

### §7003. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 459, §7 (NEW).]

**1. Custodian.** "Custodian" means the person having care and custody over the individual seeking sterilization or the individual for whom sterilization is sought.

[ 1983, c. 459, §7 (NEW) . ]

**2. Disinterested expert.** "Disinterested expert" means an appropriately licensed or certified professional not associated with an institution serving the person for whom sterilization is being sought and not personally related to the petitioner.

[ 1983, c. 459, §7 (NEW) . ]

**3. Guardian.** "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

[ 1983, c. 459, §7 (NEW) . ]

**4. Informed consent.** "Informed consent" means consent that is:

A. Based upon an actual understanding by the person to be sterilized of the nature of sterilization, its potentially permanent consequences, all alternative methods of contraception and all reasonably foreseeable risks and benefits of sterilization; and [1983, c. 459, §7 (NEW).]

B. Wholly voluntary and free from express or implied coercion. [1983, c. 459, §7 (NEW).]

[ 1983, c. 459, §7 (NEW) . ]

**5. Parent.** "Parent" means a natural or adoptive mother or father of a person.

[ 1983, c. 459, §7 (NEW) . ]

**6. Physician.** "Physician" means any person licensed to practice medicine under Title 32, chapter 48, subchapter II, or under Title 32, chapter 36, subchapters II and IV.

[ 1983, c. 459, §7 (NEW) .]

**7. Psychiatrist.** "Psychiatrist" means a physician licensed to practice medicine under Title 32, chapter 48, subchapter II, who specializes in the diagnosis and treatment of mental disorders.

[ 1983, c. 459, §7 (NEW) .]

**8. Psychologist.** "Psychologist" means any person licensed to practice psychology under Title 32, chapter 56, subchapter III.

[ 1983, c. 459, §7 (NEW) .]

**9. Sterilization.** "Sterilization" means a medical or surgical procedure, the purpose of which is to render an individual permanently incapable of procreation. Sterilization does not refer to procedures which must be performed for distinct and urgent medical reasons and which have the unavoidable secondary effect of rendering the individual infertile.

[ 1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).

## §7004. INFORMED CONSENT REQUIRED FOR STERILIZATION

**1. Informed consent required.** Except as provided in this chapter, prior to initiating sterilization procedures on any individual, a physician shall obtain and record the informed consent of that individual.

[ 1983, c. 459, §7 (NEW) .]

**2. Hearing required to determine ability to give informed consent for sterilization.** A hearing to determine ability to give informed consent for sterilization is required when sterilization is sought for:

A. Persons under age 18 years and not married or otherwise emancipated; [1983, c. 459, §7 (NEW) .]

B. Persons presently under public or private guardianship or conservatorship; [1983, c. 459, §7 (NEW) .]

C. Persons residing in a state institution providing care, treatment or security, or otherwise in state custody; or [1983, c. 459, §7 (NEW) .]

D. Persons from whom a physician could not obtain informed consent. [1983, c. 459, §7 (NEW) .]

[ 1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).

## §7005. STERILIZATION AUTHORIZED BY COURT

**1. Court order required.** A District Court order authorizing sterilization is required before the sterilization of any person described in section 7004, subsection 2.

[ 1983, c. 459, §7 (NEW) . ]

**2. Determination prior to issuance of order.** Before an order may be issued, the court shall determine whether the person seeking sterilization or for whom sterilization is sought is able to give informed consent for sterilization and, if so, whether he has given informed consent for sterilization.

[ 1983, c. 459, §7 (NEW) . ]

### SECTION HISTORY

1983, c. 459, §7 (NEW) .

## §7006. CONTENTS OF PETITION FOR DETERMINATION OF ABILITY TO GIVE INFORMED CONSENT FOR STERILIZATION

The petition for determination of ability to give informed consent for sterilization shall be executed under oath and shall set forth: [1983, c. 459, §7 (NEW) . ]

**1. Person seeking sterilization or for whom sterilization is sought.** Name, age and residence of the person seeking sterilization or for whom sterilization is sought;

[ 1983, c. 459, §7 (NEW) . ]

**2. Parent, guardian or spouse.** Names and residences of any parents, spouse or guardian of the person seeking sterilization or for whom sterilization is sought;

[ 1983, c. 459, §7 (NEW) . ]

**3. Basis of petition.** A statement of the factors, including any listed in section 7004, subsection 2, and mental condition, when appropriate, which necessitate a determination of the ability of the person seeking sterilization or for whom sterilization is sought to give informed consent for sterilization;

[ 1983, c. 459, §7 (NEW) . ]

**4. Reasons for sterilization.** A statement of the reasons for which sterilization is sought; and

[ 1983, c. 459, §7 (NEW) . ]

**5. Person initiating petition.** The name, address, position and statement of interest of the person initiating the petition or any person assisting with a self-initiated petition.

[ 1983, c. 459, §7 (NEW) . ]

### SECTION HISTORY

1983, c. 459, §7 (NEW) .

## **§7007. SUBMITTING PETITION TO DETERMINE INFORMED CONSENT; NOTICE OF HEARING**

**1. Petition submission.** The petition for a determination of ability to give informed consent shall be submitted to the District Court in the division of residence of the person seeking sterilization or for whom sterilization is sought.

[ 1983, c. 459, §7 (NEW) .]

**2. Notice of hearing.** Upon the receipt of a petition to determine informed consent, the District Court shall assign a time, not later than 30 days thereafter, and a place for hearing the petition. The court may, at its discretion, hold the hearing on the petition at a place within the county other than the usual courtroom if it would facilitate the presence of the person seeking sterilization or for whom sterilization is sought.

[ 1983, c. 459, §7 (NEW) .]

**3. Service of notice.** The court shall cause a copy of the petition and notice of hearing to be served on the person seeking sterilization or for whom sterilization is sought and his guardian or custodian, if any, at least 7 days prior to the hearing date. If a guardian or custodian of the person seeking sterilization or for whom sterilization is sought is not a resident of this State, notice may be served by registered mail. If the residence of a guardian or custodian is unknown, an affidavit so stating shall be filed in lieu of service.

[ 1983, c. 459, §7 (NEW) .]

### **SECTION HISTORY**

1983, c. 459, §7 (NEW) .

## **§7008. HEARING UPON A PETITION TO DETERMINE INFORMED CONSENT FOR STERILIZATION**

**1. Counsel.** If the person seeking sterilization or for whom sterilization is sought requests counsel and cannot afford counsel, the court shall appoint counsel to represent that person at public expense. If the person is not represented by counsel and appears to the court unable to request counsel, the court shall order that counsel be retained or shall appoint counsel to represent the person at public expense if the person cannot afford counsel. A reasonable fee shall be set for appointed counsel by the District Court. Counsel, or the person seeking sterilization or for whom sterilization is sought, may present evidence, call witnesses and cross-examine witnesses who testify or present evidence at any hearing on the petition.

[ 1983, c. 459, §7 (NEW) .]

**2. Appointment of disinterested experts.** For the purpose of determining a person's ability to give informed consent, the court shall appoint not less than 2 disinterested experts experienced in the field of developmental disabilities or mental health, including at least one psychologist or psychiatrist, to examine the person, to report on that examination and to testify at the hearing as to his competency. Other evidence regarding the person's capabilities may be introduced at the hearing by any party.

[ 1983, c. 459, §7 (NEW) .]

**3. Preference of person seeking sterilization or for whom sterilization is sought.** If the person seeking sterilization or for whom sterilization is sought has any preference as to a disinterested expert by whom he would prefer to be examined, the court shall make a reasonable effort to accommodate that preference.

[ 1983, c. 459, §7 (NEW) .]



**4. Person's presence at hearing.** The person seeking sterilization or for whom sterilization is sought shall be present at any hearing regarding his ability to give informed consent for sterilization, unless that right is waived by the person, personally or through his attorney, and that waiver is approved by the court. The court shall inquire at the time of the hearing as to the types and effects of any medications being administered to or taken by the person.

[ 1983, c. 459, §7 (NEW) . ]

**5. Determination that person is able to give informed consent for sterilization.** If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization and that the person does consent to sterilization, it shall issue an order so stating and permitting the sterilization to be performed. Prior to the performance of the sterilization, the physician and hospital involved shall also obtain the written consent of the person for sterilization.

If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization, but determines that the person does not consent to sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless that person later makes a different choice and only after a rehearing under this section.

[ 1983, c. 459, §7 (NEW) . ]

**6. Determination that person is not able to give informed consent for sterilization.** If the court determines that the person is not able to give informed consent for sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless a determination is made under section 7013 that sterilization is in the best interest of the person.

[ 1983, c. 459, §7 (NEW) . ]

#### SECTION HISTORY

1983, c. 459, §7 (NEW) .

## §7009. LIMITATIONS

**1. Consent not to be a condition for exercise of any right, privilege or freedom.** Consent to sterilization may not be made a condition for release from or confinement in any institution nor shall it be made a condition for the exercise of any right, privilege or freedom, nor shall it be made a condition for receiving any form of public assistance, nor as a prerequisite for any other service. The consent shall be free from express or implied inducements or constraints.

[ 1983, c. 459, §7 (NEW) . ]

**2. Guarantees and limitations to be given to person to be sterilized.** The guarantees and limitations provided in this section shall be communicated to the person seeking sterilization or for whom sterilization is sought by the court prior to issuing an order under section 7008. These guarantees and limitations shall also appear prominently at the top of the consent document used by a physician or hospital to obtain written consent for sterilization.

[ 1983, c. 459, §7 (NEW) . ]

#### SECTION HISTORY

1983, c. 459, §7 (NEW) .

## **§7010. DETERMINATION OF THE BEST INTERESTS OF A PERSON UNABLE TO GIVE INFORMED CONSENT FOR STERILIZATION**

The parent, spouse, guardian or custodian of any person found unable to give informed consent for sterilization may petition the District Court, in the county of residence of the person being considered for sterilization, to determine if sterilization is in the best interest of that person. The court shall have sole jurisdiction and authority to order that a sterilization procedure may be performed when a person is incapable of giving informed consent, as determined by the hearing required in section 7008. [1983, c. 459, §7 (NEW) .]

### **SECTION HISTORY**

1983, c. 459, §7 (NEW) .

## **§7011. CONTENTS OF PETITION FOR CONSIDERATION OF STERILIZATION OF A PERSON BASED UPON A DETERMINATION**

The petition for determination if sterilization is in the best interest of a person shall be executed under oath and shall set forth: [1983, c. 459, §7 (NEW) .]

**1. Person being considered for sterilization.** The name, age and residence of the person being considered for sterilization;

[ 1983, c. 459, §7 (NEW) .]

**2. Parents, spouse, custodian or guardian of person being considered for sterilization.** The names and residences of any parents, spouse, custodian or guardian of the person being considered for sterilization;

[ 1983, c. 459, §7 (NEW) .]

**3. Mental condition.** The mental condition of and effects of any medications being administered to or taken by the person being considered for sterilization;

[ 1983, c. 459, §7 (NEW) .]

**4. Reasons sterilization is sought.** A statement, in terms of the best interest of the person, of the reasons for which sterilization is sought;

[ 1983, c. 459, §7 (NEW) .]

**5. Petitioner.** The name and relationship of the petitioner to the person being considered for sterilization;

[ 1983, c. 459, §7 (NEW) .]

**6. Alternatives.** Less drastic alternative contraceptive methods which have been tried or the reason those methods are believed to be unworkable or inappropriate for the person being considered for sterilization;

[ 1983, c. 459, §7 (NEW) .]

**7. Physiological capability to procreate.** A medical statement assessing the physiological capability of the person to procreate;

[ 1983, c. 459, §7 (NEW) .]

**8. Risk to life or health.** A medical statement regarding the potential risk to the life or health of the person which could be caused by procreation or child rearing;

[ 1983, c. 459, §7 (NEW) . ]

**9. Person's attitudes or desires regarding sterilization.** Any attitudes or desires expressed by the person regarding sterilization; and

[ 1983, c. 459, §7 (NEW) . ]

**10. Informed consent order.** The date and contents of the order issued under section 7008 concerning the ability to give informed consent for sterilization of the person being considered for sterilization.

[ 1983, c. 459, §7 (NEW) . ]

#### SECTION HISTORY

1983, c. 459, §7 (NEW) .

### **§7012. NOTICE OF HEARING UPON THE PETITION TO DETERMINE THE BEST INTEREST OF A PERSON BEING CONSIDERED FOR STERILIZATION**

Upon the receipt of a petition, the court shall assign a time, not later than 30 days thereafter, and a place for a hearing on the petition. The court may, at its discretion, hold the hearing on the petition at a place within the county other than the usual courtroom, if it would facilitate the presence of the person being considered for sterilization. The court shall cause the petition and notice of the hearing to be served on the person being considered for sterilization and his guardian or custodian at least 20 days prior to the hearing date. The court shall direct that personal service be made upon the person being considered for sterilization and his guardian or custodian. If the guardian or custodian of the person being considered for sterilization is not a resident of this State, notice may be served by registered mail. If the residence of the guardian or custodian of the person being considered for sterilization is unknown, an affidavit so stating shall be filed in lieu of service. [ 1983, c. 459, §7 (NEW) . ]

#### SECTION HISTORY

1983, c. 459, §7 (NEW) .

### **§7013. HEARING UPON A PETITION TO DETERMINE THE BEST INTEREST OF A PERSON BEING CONSIDERED FOR STERILIZATION**

**1. Ability to give or withhold informed consent.** In all instances where the issue of whether sterilization is in the best interest of a person is to be considered, a prior determination, as required by section 7008, that the person cannot give or withhold informed consent shall be required.

[ 1983, c. 459, §7 (NEW) . ]

**2. Presence of person; counsel; findings.** The person being considered for sterilization shall be physically present throughout the entire best interest hearing, unless that right is waived by the person, personally or through his attorney, and that waiver is approved by the court. The person being considered for sterilization shall be represented by counsel and provided the right and opportunity to be confronted with and to cross-examine all witnesses. The right to counsel may not be waived. If the person cannot afford counsel, the court shall appoint an attorney, not less than 20 days before the scheduled hearing, to represent the person at public expense. A reasonable fee shall be set for appointed counsel by the District Court. Counsel shall represent the person being considered for sterilization in assuring that information and evidence in opposition

to sterilization without informed consent is fully represented. All stages of the hearing shall be recorded by a tape recorder or a court reporter, as the court may direct. In all cases, the court shall issue written findings to support its decision.

[ 1983, c. 459, §7 (NEW) .]

**3. Disinterested experts; evidence.** The court shall hear the petition to determine whether sterilization is in the best interest of the person being considered for sterilization. The court shall appoint not less than 3 disinterested experts with experience related to the condition of the person as alleged in the petition, including at least one physician and one licensed psychologist or psychiatrist, to examine the person and to testify at the hearing. The court shall hear and consider evidence on the following:

A. All issues raised by the petition executed under section 7011; and [1983, c. 459, §7 (NEW) .]

B. The beneficial or detrimental psychological and physiological effects of sterilization on the person being considered for sterilization. [1983, c. 459, §7 (NEW) .]

Any other relevant evidence concerning the mental and physical condition of the person being considered for sterilization may be introduced at the hearing.

[ 1983, c. 459, §7 (NEW) .]

**4. Burden of proof.** The burden of proof by clear and convincing evidence that sterilization is in the best interest of the person being considered for sterilization shall rest with the party seeking to establish that sterilization is the appropriate course of action.

[ 1983, c. 459, §7 (NEW) .]

**5. Finding that sterilization is in person's best interest.** The court shall find that sterilization is in the best interest of the person being considered for sterilization if it is shown by clear and convincing evidence that:

A. Methods of contraception less drastic than sterilization have proven to be unworkable or inappropriate for the person; and [1983, c. 459, §7 (NEW) .]

B. Sterilization is necessary to preserve the physical or mental health of the person. [1983, c. 459, §7 (NEW) .]

**6. Court order.** If the court finds that sterilization is in the best interest of the person being considered for sterilization, the court shall order that sterilization may be performed. The sterilization procedure used shall be the most reversible procedure available at the time when, in the judgment of the physician performing the sterilization, that procedure is not inconsistent with the health or safety of his patient. If the court finds that sterilization is not in the best interest of the person being considered for sterilization, the court shall order that sterilization may not be performed, unless the order is amended by a District Court to permit sterilization.

[ 1983, c. 459, §7 (NEW) .]

**7. Appeal.** Appeal of a final order of a District Court shall be by right in accordance with the Maine Rules of Civil Procedure, except that, upon a finding of inability to pay the required fees for an appeal, those fees shall be waived. Pendency of an appeal of an order under this section shall stay any order allowing sterilization.

[ 1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW) .

## §7014. CONFIDENTIALITY; COURT COSTS

**1. Confidentiality of proceedings and records.** All court proceedings occurring under this chapter are confidential and closed to the public, unless the person seeking sterilization or being considered for sterilization, personally or through that person's attorney, requests that the proceedings be open to the public. Records of the court proceedings are not open to inspection by the public without the consent, personally or through that person's attorney, of the person seeking sterilization or for whom sterilization is being considered.

[ 1993, c. 360, Pt. I, §2 (AMD) .]

**2. Costs and fees.** The court, after considering the financial resources of the parties concerned and the source of a petition under this chapter, shall assess court costs and attorneys' fees.

[ 1983, c. 459, §7 (NEW) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1993, c. 360, §12 (AMD).

## §7015. PENALTIES

**1. Violations.** Anyone knowingly or willfully violating section 7009, subsection 1, is guilty of a Class D crime.

[ 1983, c. 459, §7 (NEW) .]

**2. Falsification of petition; aiding or procuring unlawful sterilization.** Anyone knowingly or willfully falsifying a petition under this chapter or otherwise aiding or procuring the performance of a sterilization without a court order in a situation covered by this chapter is guilty of a Class D crime.

[ 1983, c. 459, §7 (NEW) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW).

## §7016. LIABILITY

**1. Participation in sterilization.** Nothing in this chapter requires any hospital or any person to participate in performing any sterilization procedure, nor may any hospital or any person be civilly or criminally liable for refusing to participate in performing any sterilization procedure.

[ 1983, c. 459, §7 (NEW) .]

**2. Immunity.** A physician, psychiatrist or psychologist acting nonnegligently and in good faith in his professional capacity under this chapter is immune from any civil liability that might otherwise result from his actions. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

[ 1983, c. 459, §7 (NEW) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW).

## **§7017. STERILIZATION PROCEDURES REVIEW COMMITTEE**

***(REPEALED)***

### SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 295, §50 (AMD). 1993, c. 360, §I3 (RP).

## Chapter 9: INTERSTATE COMPACT ON MENTAL HEALTH

### §9001. PURPOSE--ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families and society as a whole. The party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient, but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in term of such welfare. [1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW) .

### §9002. DEFINITIONS--ARTICLE II

As used in this compact, unless the context otherwise indicates, the following words have the following meanings. [1983, c. 459, §7 (NEW) .]

**1. Aftercare.** "Aftercare" means care, treatment and services provided a patient, as defined, on convalescent status or conditional release.

[ 1983, c. 459, §7 (NEW) . ]

**2. Institution.** "Institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

[ 1983, c. 459, §7 (NEW) . ]

**3. Mental deficiency.** "Mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person is incapable of managing that person's affairs, but may not include mental illness.

[ 2009, c. 299, Pt. A, §7 (AMD) . ]

**4. Mental illness.** "Mental illness" means mental disease to such extent that a person requires care and treatment for that person's own welfare or the welfare of others or of the community.

[ 2009, c. 299, Pt. A, §8 (AMD) . ]

**5. Patient.** "Patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to this compact.

[ 1983, c. 459, §7 (NEW) . ]

**6. Receiving state.** "Receiving state" means a party state to which a patient is transported pursuant to the compact or to which it is contemplated that a patient may be so sent.

[ 1983, c. 459, §7 (NEW) . ]

**7. Sending state.** "Sending state" means a party state from which a patient is transported pursuant to the compact or from which it is contemplated that a patient may be so sent.

[ 1983, c. 459, §7 (NEW) .]

**8. State.** "State" means any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

[ 1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW). 2009, c. 299, Pt. A, §§7, 8 (AMD).

### §9003. CARE AND TREATMENT--ARTICLE III

**1. Eligibility.** Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

[ 1983, c. 459, §7 (NEW) .]

**2. Transfer.** Subsection 1 to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subsection shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

[ 1983, c. 459, §7 (NEW) .]

**3. Duties of receiving and sending states.** No state shall be obliged to receive any patient pursuant to subsection 2 unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

[ 1983, c. 459, §7 (NEW) .]

**4. Priorities.** In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

[ 1983, c. 459, §7 (NEW) .]

**5. Review and further transfer.** Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

[ 1983, c. 459, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 459, §7 (NEW).



## §9004. AFTERCARE--ARTICLE IV

**1. Investigation.** Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

[ 1983, c. 459, §7 (NEW) . ]

**2. Aftercare in receiving state.** If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

[ 1983, c. 459, §7 (NEW) . ]

**3. Standards.** In supervising, treating or caring for a patient on aftercare pursuant to the terms of this Article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

[ 1983, c. 459, §7 (NEW) . ]

### SECTION HISTORY

1983, c. 459, §7 (NEW) .

## §9005. ESCAPE--ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, the dangerous or potentially dangerous patient must be detained in the state where found pending disposition in accordance with law. [2009, c. 2, §96 (COR) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW). RR 2009, c. 2, §96 (COR) .

## §9006. TRANSPORTATION OF PATIENT--ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference. [1983, c. 459, §7 (NEW) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW) .

## §9007. COSTS; RECIPROCAL AGREEMENTS--ARTICLE VII

**1. Patient at only one institution.** No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

[ 1983, c. 459, §7 (NEW) .]

**2. Costs.** The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any 2 or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

[ 1983, c. 459, §7 (NEW) .]

**3. Internal relationships not affected.** No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

[ 1983, c. 459, §7 (NEW) .]

**4. Asserting rights for costs.** Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible, pursuant to any provision of this compact.

[ 1983, c. 459, §7 (NEW) .]

**5. Reciprocal agreements not invalidated.** Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

[ 1983, c. 459, §7 (NEW) .]

### SECTION HISTORY

1983, c. 459, §7 (NEW).

## §9008. GUARDIANS--ARTICLE VIII

**1. Supplemental or substitute guardian.** Nothing in this compact may be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any patient's guardian on the guardian's own behalf or in respect of any patient for whom the guardian may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court that appointed the previous guardian shall, upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed by it or continue the guardian's power and responsibility, whichever the court considers advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

[ 2011, c. 420, Pt. A, §29 (AMD) .]

**2. Guardian defined.** The term "guardian" as used in subsection 1 shall include any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with power to act for or have responsibility for the person or property of a patient.

[ 1983, c. 459, §7 (NEW) . ]

SECTION HISTORY

1983, c. 459, §7 (NEW). 2011, c. 420, Pt. A, §29 (AMD).

## **§9009. INCARCERATION IN PENAL OR CORRECTIONAL INSTITUTION-- ARTICLE IX**

**1. Application.** No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

[ 1983, c. 459, §7 (NEW) . ]

**2. Policy not to jail.** To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

[ 1983, c. 459, §7 (NEW) . ]

SECTION HISTORY

1983, c. 459, §7 (NEW).

## **§9010. COMPACT ADMINISTRATORS--ARTICLE X**

**1. Duties.** Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

[ 1983, c. 459, §7 (NEW) . ]

**2. Rules and regulations.** The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

[ 1983, c. 459, §7 (NEW) . ]

SECTION HISTORY

1983, c. 459, §7 (NEW).

## **§9011. SUPPLEMENTARY AGREEMENTS--ARTICLE XI**

The duly constituted administrative authorities of any 2 or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve

services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact. [1983, c. 459, §7 (NEW).]

SECTION HISTORY

1983, c. 459, §7 (NEW).

## §9012. EFFECTIVE DATE OF COMPACT--ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein. [1983, c. 459, §7 (NEW).]

SECTION HISTORY

1983, c. 459, §7 (NEW).

## §9013. WITHDRAWAL FROM COMPACT--ARTICLE XIII

**1. Procedure; effective date; effect.** A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. The withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the compact.

[ 1983, c. 459, §7 (NEW) .]

**2. Costs and supplementary agreements.** Withdrawal from any agreement permitted by Article VII, subsection 2, as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

[ 1983, c. 459, §7 (NEW) .]

SECTION HISTORY

1983, c. 459, §7 (NEW).

## §9014. CONSTITUTIONALITY--ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1983, c. 459, §7 (NEW).]

SECTION HISTORY

1983, c. 459, §7 (NEW).

## Chapter 11: MEDICAL TREATMENT OF PSYCHOTIC DISORDERS

### §11001. MEDICAL TREATMENT OF PSYCHOTIC DISORDERS

**1. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient. [1993, c. 454, §1 (NEW).]

B. "Declarant" means a person suffering from a psychotic condition who has executed a declaration while in a state of remission in accordance with the requirements of subsection 2. [1993, c. 454, §1 (NEW).]

C. "Declaration" means a written document voluntarily executed by the declarant in accordance with the requirements of subsection 2 regardless of form. [1993, c. 454, §1 (NEW).]

D. "Health care facility" includes any program, institution, place, building or agency or portion thereof, private or public, whether organized for profit or not, used, operated or designed to provide medical diagnosis, treatment or rehabilitative or preventive care to any person. "Health care facility" includes, but is not limited to, facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations and other facilities providing similarly organized services regardless of nomenclature. [1993, c. 454, §1 (NEW).]

E. "Health care provider" means a person who is licensed, certified or otherwise authorized or permitted by law to administer health care in the ordinary course of business or practice of a profession. [1993, c. 454, §1 (NEW).]

F. "Incompetent person" means a person who suffers from a psychotic condition who is temporarily impaired by reason of having lapsed into that psychotic condition to the extent that while temporarily impaired, the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person's health care. [1993, c. 454, §1 (NEW).]

G. "Physician" means an individual licensed to practice medicine. [1993, c. 454, §1 (NEW).]

H. "Psychotic condition" means any disease, illness or condition commonly referred to by the medical profession according to ordinary standards of current medical practice as any disorder characterized by psychotic tendencies or manic-depressive behavior or schizophrenia or other similar condition that, without the administration of appropriate medical treatment, including the use of psychotropic drugs, would constitute a danger to the patient or to others and would result in a patient being gravely disabled. [1993, c. 454, §1 (NEW).]

[ 1993, c. 454, §1 (NEW) . ]

**2. Execution of declaration.** Any person 18 years of age or older who suffers from a psychotic condition but is competent and in a state of remission at the time of execution may execute a declaration directing that medical treatment, including the administration of psychotropic drugs, be provided at a time when the person has lapsed and is not able to make decisions regarding medical treatment.

[ 1993, c. 454, §1 (NEW) . ]

**3. Declaration requirements.** A declaration made pursuant to this chapter must:

A. Be in writing; [1993, c. 454, §1 (NEW).]

B. Be signed by the person making the declaration or by another person in the declarant's presence and at the declarant's expressed direction; [1993, c. 454, §1 (NEW).]

C. Be dated; [1993, c. 454, §1 (NEW).]

D. Be signed in the presence of 2 or more witnesses who are:

(1) At least 18 years of age;

(2) Not related to the declarant by blood, marriage or adoption;

(3) Not, at the time the declaration is executed, attending physicians, employees of the attending physicians or employees of a health care facility in which the declarant is a patient; and [1993, c. 454, §1 (NEW).]

E. Have all signatures notarized at the same time. [1993, c. 454, §1 (NEW).]

[1993, c. 454, §1 (NEW).]

**4. Declaration sample form.** The following declaration sample form may be copied and used by filling in the blanks or may be changed to add more individualized instructions or an entirely different format may be used to provide health care instructions.

#### DECLARATION

##### I. Statement of Declarant

Declaration made this ..... day of ..... (month, year). I, ....., being of sound mind, willfully and voluntarily make known my desire that medical treatment as outlined below, including the administration of psychotropic drugs if necessary, be provided to me under the circumstances set forth below, and do hereby declare:

If at any time I should lapse into a psychotic condition as determined by 2 physicians who have personally examined me, one of whom is my attending physician and the physicians have determined that I am unable to make decisions concerning my medical treatment, and that without medical treatment my condition will result in my being gravely disabled and in my posing a serious danger to myself or to others and when medical treatment would serve to remedy the condition and prevent potential or further harm to myself or to others, I direct that the following personal medical treatment plan, including the elements checked below, be provided to me and be carried out:

(....) Psychotropic drugs (specify) .....

(....) Hospitalization if necessary

(....) Counseling

(....) Therapy involving my family members or friends

(....) (Other treatment) .....

In the absence of my ability to give directions regarding the provision of medical treatment, it is my intention that this declaration be honored by my family and physician(s) as my legal informed consent to receive medical treatment.

My instructions must prevail even if they create a conflict with the desires of my relatives. This declaration controls in all circumstances.

I understand the full import of this declaration and declare that I am emotionally and mentally competent at this time to make this declaration.

Signed .....

Address .....

##### II. Statement of Witnesses

I am at least 18 years of age and am not related to the declarant by blood, marriage or adoption or the attending physician, an employee of the attending physician or an employee of the health care facility in which the declarant is a patient.

The declarant is personally known to me and I believe the declarant to be of sound mind at this time of execution.

Witness .....  
Address .....  
Witness .....  
Address.....

### III. Notarization

Subscribed, sworn to and acknowledged before me by ....., the declarant, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of ....., 19....

(SEAL)

Signed .....  
.....

(official capacity of officer)

[ 1993, c. 454, §1 (NEW) . ]

**5. Presumed validity of declaration.** If a patient is incompetent at the time of the decision to give medical treatment, a declaration executed in accordance with subsection 2 is presumed valid.

For the purpose of this chapter, a physician or health care facility may presume, in the absence of actual notice to the contrary, that a person who executed a declaration was of sound mind when the declaration was executed.

Execution of a declaration may not be considered an indication of a declarant's mental incompetence.

[ 1993, c. 454, §1 (NEW) . ]

**6. Patient's wishes supersede declaration.** The wishes of a declarant, at all times when the declarant is in a state of remission and is competent, supersede the declaration.

[ 1993, c. 454, §1 (NEW) . ]

**7. Declaration becomes part of medical records.** The declarant must provide for delivery of the notarized declaration to the attending physician. If the declarant is comatose, incompetent or otherwise mentally or physically incapable after executing the declaration, any other person may deliver the notarized declaration to the physician. An attending physician who is notified under this subsection shall promptly make the declaration a part of the declarant's medical records.

[ 1993, c. 454, §1 (NEW) . ]

**8. Duty to deliver.** A person who has a declaration of another in that person's possession and who becomes aware that the declarant is in circumstances under which the terms of the declaration may become applicable shall deliver the declaration to the declarant's attending physician or to the health care facility in which the declarant is a patient.

[ 1993, c. 454, §1 (NEW) . ]

**9. Written certification.** An attending physician who has been notified of the existence of a declaration executed under this chapter shall make all reasonable efforts to obtain the notarized declaration and shall ascertain without delay whether the declarant's current condition corresponds to the condition under which the declaration would take effect.

If a patient's condition corresponds to the condition described in the patient's declaration, a written certification of the declarant's condition must be made a part of the declarant's medical record and must be substantially in the following form:

**CERTIFICATION OF CONDITION SPECIFIED IN PATIENT'S DECLARATION**

I certify that, in my professional opinion, (name of patient) ..... is not able to participate in decisions concerning medical treatment to be administered and has the following condition:

(diagnosis) .....

According to the declaration, (name of patient) ..... wishes to receive medical treatment according to a personal medical treatment plan as specified in the patient's declaration under these circumstances.

Signed .....

Attending Physician

Signed .....

Second Attending Physician

[ 1993, c. 454, §1 (NEW) . ]

**10. Identification of declarant.** All inpatient health care facilities shall develop a system to visibly identify a patient's chart that contains a declaration as set forth in this chapter.

[ 1993, c. 454, §1 (NEW) . ]

**11. Transfer to another physician.** An attending physician and any other physician under the attending physician's direction or control who possesses the patient's declaration or knows that the declaration is part of the patient's record in the health care facility in which the declarant is receiving care shall follow as closely as possible the terms of the declaration.

An attending physician who, because of personal beliefs or conscience, refuses or is unable to certify a patient or who is unable to comply with the terms of the patient's declaration shall make the necessary arrangements to transfer the patient and the appropriate medical records without delay to another physician. A physician who transfers the patient without unreasonable delay or who makes a good faith attempt to do so is not subject to criminal prosecution or civil liability and may not be found to have committed an act of unprofessional conduct for refusal to comply with the terms of the declaration. Transfer under these circumstances does not constitute abandonment.

Failure of an attending physician to transfer in accordance with this section constitutes professional misconduct.

[ 1993, c. 454, §1 (NEW) . ]

**12. Revocation.** At any time the declarant is in a state of remission and is competent, the declaration may be revoked by:

A. Canceling, defacing, obliterating, burning, tearing or otherwise destroying by the declarant or by some person in the declarant's presence and at the declarant's direction; [ 1993, c. 454, §1 (NEW) . ]

B. A written revocation signed and dated by the declarant expressing the declarant's intent to revoke. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation; [ 1993, c. 454, §1 (NEW) . ]



C. A declarant's unambiguous verbal expression in the presence of 2 adult witnesses of an intent to revoke the declaration. The revocation becomes effective upon communication to the attending physician by the declarant or by both witnesses. The attending physician shall record in the patient's medical record the time, date and place of the revocation and the time, date and place, if different, at which the attending physician received notification of the revocation; or [1993, c. 454, §1 (NEW).]

D. A declarant's unambiguous verbal expression of an intent to revoke the declaration to an attending physician. [1993, c. 454, §1 (NEW).]

[ 1993, c. 454, §1 (NEW) . ]

**13. Health care or health insurance.** A person or entity may not require any person to execute a declaration as a condition for being insured for or for receiving insurance benefits or health care services.

[ 1993, c. 454, §1 (NEW) . ]

**14. Criminal penalties.** A person who threatens, directly or indirectly, coerces or intimidates any person to execute a declaration commits a Class C crime.

A person who willfully conceals, cancels, defaces, obliterates or damages another's declaration without the declarant's consent or who falsifies or forges a declarant's revocation of declaration with the intent to create the false impression that the declarant has directed that no medical treatment be given commits a Class E crime.

A physician who willfully fails to record a statement of revocation according to the requirements of subsection 12 commits a Class C crime.

[ 1993, c. 454, §1 (NEW) . ]

**15. Health personnel protections.** In the absence of actual notice of the revocation of a declaration, a health care provider, health care facility, physician or other person acting under the direction of an attending physician is not subject to criminal prosecution or civil liability and may not be deemed to have engaged in unprofessional conduct as a result of the provision of medical treatment to a declarant in accordance with this chapter unless the absence of actual notice resulted from the negligence of the health care provider, physician or other person.

[ 1993, c. 454, §1 (NEW) . ]

**16. Petition for guardianship.** A person may petition the court for appointment of a guardian for a declarant if that person has good reason to believe that the provision of medical treatment in a particular case:

A. Is contrary to the most recent expressed wishes of a declarant who was in remission and was competent at the time of expressing the wishes; [1993, c. 454, §1 (NEW).]

B. Is being proposed pursuant to a declaration that has been falsified, forged or coerced; or [1993, c. 454, §1 (NEW).]

C. Is being considered without the benefit of a revocation that has been unlawfully concealed, destroyed, altered or cancelled. [1993, c. 454, §1 (NEW).]

[ 1993, c. 454, §1 (NEW) . ]

**17. Procedure in absence of declaration.** In the absence of a declaration, ordinary standards of current medical practice must be followed. Nothing in this chapter may be construed to require a declaration in order for medical treatment to be given. If there is no declaration, a verbal statement made by the patient to either a physician or to the patient's friend or relative may be considered by the physician in deciding whether the patient would want the physician to provide medical treatment. Unambiguous verbal statements by the patient or reliable reports of these statements must be documented in the patient's medical record.

The provision of medical treatment pursuant to this subsection is not grounds for any civil or criminal action and does not constitute professional misconduct.

[ 1993, c. 454, §1 (NEW) .]

**18. Preservation of existing rights.** Nothing in this chapter impairs or supersedes any legal right or legal responsibility that a person may have to provide medical treatment in a lawful manner. In this respect, the provisions of this chapter are cumulative.

[ 1993, c. 454, §1 (NEW) .]

**19. No presumption.** This chapter does not create a presumption concerning the intention of a person who has revoked or has not executed a declaration to receive medical treatment.

[ 1993, c. 454, §1 (NEW) .]

**20. Declaration executed before effective date.** The declaration of any patient executed prior to the effective date of this chapter must be given effect as provided in this chapter.

[ 1993, c. 454, §1 (NEW) .]

**21. Recognition of document executed in another state.** A document executed in another state is valid for purposes of this chapter if the document and the execution of the document substantially comply with the requirements of this chapter.

[ 1993, c. 454, §1 (NEW) .]

**22. Effect of multiple documents.** Medical treatment instructions contained in a declaration executed in accordance with this chapter supersede:

A. A contrary or conflicting instruction given by a proxy or an attorney for health care decisions unless the proxy appointment or the power of attorney expressly provides otherwise; and [1993, c. 454, §1 (NEW) .]

B. Instructions in a prior declaration. [1993, c. 454, §1 (NEW) .]

[ 1993, c. 454, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 454, §1 (NEW) .

## Chapter 13: APPOINTMENT OF RECEIVERS

### §13001. POLICY

It is the purpose of this chapter to develop a mechanism by which the concept of receivership can be utilized for the protection of individuals served or funded by the department. It is the intent of the Legislature that receivership be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile. [1997, c. 610, §3 (NEW).]

#### SECTION HISTORY

1997, c. 610, §3 (NEW).

### §13002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 610, §3 (NEW).]

**1. Client.** "Client" means a person who receives services from a provider.

[ 1997, c. 610, §3 (NEW) .]

**2. Emergency.** "Emergency" means a situation, physical condition, financial condition or one or more practices, methods or operations that present imminent danger of death or serious physical or mental harm to individuals served or funded by the department, including, but not limited to, imminent or actual abandonment of a facility or service.

[ 1997, c. 610, §3 (NEW) .]

**3. Facility.** "Facility" means any residential facility funded in whole or in part by the department but does not include hospitals licensed pursuant to Title 22, chapter 405.

[ 1997, c. 610, §3 (NEW) .]

**4. Habitual violation.** "Habitual violation" means a violation of state or federal law that, due to its repetition, presents a reasonable likelihood of serious physical or mental harm to residents.

[ 1997, c. 610, §3 (NEW) .]

**5. Licensee.** "Licensee" means any person or any other legal entity, other than a receiver appointed under section 13003, who is licensed or required to be licensed to operate a facility or to provide services.

[ 1997, c. 610, §3 (NEW) .]

**6. Owner.** "Owner" means the holder of the title to the real estate in which the facility is maintained.

[ 1997, c. 610, §3 (NEW) .]

**7. Provider.** "Provider" means a business entity or subdivision of a business entity, whether public or private, proprietary or nonprofit, engaged in providing services licensed or funded, in whole or in part, by the department but does not include a hospital licensed pursuant to Title 22, chapter 405.

[ 1997, c. 610, §3 (NEW) .]

**8. Resident.** "Resident" means any person who lives in and receives services or care in a facility.

[ 1997, c. 610, §3 (NEW) .]

**9. Substantial violation.** "Substantial violation" means a violation of state or federal law that presents a reasonable likelihood of serious physical or mental harm to residents.

[ 1997, c. 610, §3 (NEW) .]

**10. Transfer trauma.** "Transfer trauma" means the combination of medical and psychological reactions to abrupt physical transfer that may increase the risk of grave illness or death.

[ 1997, c. 610, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 610, §3 (NEW) .

### §13003. APPOINTMENT OF RECEIVER

**1. Grounds for appointment.** The following circumstances are grounds for the appointment of a receiver to operate a facility or a provider.

A. A facility or provider intends to close but has not arranged at least 30 days prior to closure for the orderly transfer of its residents or clients. [1997, c. 610, §3 (NEW) .]

B. An emergency exists in a facility or provider that threatens the health, security or welfare of residents or clients. [1997, c. 610, §3 (NEW) .]

C. A facility or provider is in substantial or habitual violation of the standards of health, safety or resident care established under state rules or federal regulations to the detriment of the welfare of the residents or clients. [1997, c. 610, §3 (NEW) .]

This remedy is in addition to, and not in lieu of, any power of the department, including, but not limited to, the power to revoke, suspend or refuse to renew any license or the power of the department to bring an action pursuant to Title 22, chapter 1666-A.

[ 1997, c. 610, §3 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

**2. Who may bring action.** The commissioner or acting commissioner may bring an action in Superior Court requesting the appointment of a receiver.

[ 1997, c. 610, §3 (NEW) .]

**3. Procedure for hearing.** The procedure for a hearing is as follows.

A. The court shall hold a hearing not later than 10 days after the action is filed, unless all parties agree to a later date. Notice of the hearing must be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee cannot be served, the court shall specify the alternative notice to be provided. The department shall post notice, in a form approved by the court, in a conspicuous place in the facility or provider for not less than 3 days before the hearing. After the hearing, the court may appoint a receiver if it finds that any one of the grounds for appointment set forth is satisfied. [1997, c. 610, §3 (NEW) .]

B. A temporary receiver may be appointed with or without notice to the owner or licensee if it appears by verified complaint or affidavit that an emergency exists in the facility or provider that must be remedied immediately to ensure the health, safety and welfare of the clients or residents. The appointment of a temporary receiver without notice to the owner or licensee may be made only if the court is satisfied that the petitioner has made a diligent attempt to provide reasonable notice under the

circumstances. Upon appointment of a temporary receiver, the department shall proceed to make service as provided in paragraph A, and a hearing must be held within 10 days, unless all parties agree to a later date. If the department does not proceed with the petition, the court shall dissolve the receivership. On 2 days' notice to the temporary receiver, all parties and the department, or on such shorter notice as the court may prescribe, the owner or licensee may appear and move the dissolution or modification of an order appointing a temporary receiver that has been entered without notice, and in that event the motion may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. [ 2011, c. 559, Pt. A, §35 (AMD) .]

[ 2011, c. 559, Pt. A, §35 (AMD) .]

**4. Who may be appointed receiver.** The court may appoint any person, except a state employee, considered appropriate by the court to act as receiver.

[ 1997, c. 610, §3 (NEW) .]

**5. Compensation of receiver.** The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with any surety the court requires. Any expenditures are paid from the revenues of the facility or provider.

[ 1997, c. 610, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 610, §3 (NEW). 2003, c. 689, §B6 (REV). 2011, c. 559, Pt. A, §35 (AMD) .

## §13004. POWERS AND DUTIES OF THE RECEIVER

**1. Powers and duties.** A receiver appointed pursuant to this chapter has such powers as the court may direct to operate the facility or provider and to remedy the conditions that constituted grounds for the receivership, to protect the health, safety and welfare of the residents or clients and to preserve the assets and property of the residents or clients, the owner and the licensee. On notice and hearing, the court may issue a writ of possession in behalf of the receiver, for specified facility or provider property. The receiver shall make reasonable efforts to notify residents or clients and family that the facility or provider is placed in receivership. The owner and licensee are divested of possession and control of the facility or provider during the period of receivership under conditions as the court specifies. With the court's approval, the receiver has specific authority to:

A. Remedy violations of state rules and federal regulations governing the operation of the facility or provider; [1997, c. 610, §3 (NEW) .]

B. Hire, direct, manage and discharge any employees, including the administrator of the facility or provider; [1997, c. 610, §3 (NEW) .]

C. Receive and expend in a reasonable and prudent manner the revenues of the facility or provider due during the 30-day period preceding the date of appointment and becoming due after the appointment; [1997, c. 610, §3 (NEW) .]

D. Continue the business of the facility or provider and the care of residents or clients; [1997, c. 610, §3 (NEW) .]

E. Correct or eliminate any deficiency of the facility or provider that endangers the safety or health of the residents or clients, if the total cost of the correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver; and [1997, c. 610, §3 (NEW) .]

F. Exercise additional powers and perform additional duties, including regular accountings, the court considers appropriate. [1997, c. 610, §3 (NEW).]

[ 1997, c. 610, §3 (NEW) .]

**2. Revenues of facility or provider.** Revenues of the facility or provider must be handled as follows.

A. The receiver shall apply the revenues of the facility or provider to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to appointment when those debts appear extraordinary, of questionable validity, unrelated to the normal and expected maintenance and operation of the facility or provider or when payment of the debts will interfere with the purposes of the receivership. Priority must be given by the receiver to expenditures for current direct resident or client care. Revenues held by or owing to the receiver in connection with the operation of the facility or provider are exempt from attachment and trustee process, including process served prior to the institution of receivership proceedings. [1997, c. 610, §3 (NEW).]

B. The receiver may correct or eliminate any deficiency of the facility or provider that endangers the safety or health of the residents or clients, if the total cost of the correction does not exceed \$3,000. On application by the receiver, the court may order expenditures for this purpose in excess of \$3,000. The licensee or owner may apply to the court to determine the reasonableness of any expenditure over \$3,000 by the receiver. [1997, c. 610, §3 (NEW).]

C. In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the residents or clients, the receiver may petition the court for permission to borrow for these purposes. Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee and the department. The court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the facility or provider should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy or if it determines that the facility or provider should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents or clients for the limited period of time that they are awaiting transfer. The purpose of this provision is to protect residents or clients and to prevent the closure of facilities or providers that, under proper management, are likely to be viable operations. This section may not be construed as a method of financing major repair or capital improvements to facilities that have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means. [1997, c. 610, §3 (NEW).]

[ 1997, c. 610, §3 (NEW) .]

**3. Avoidance of preexisting leases, mortgages and contracts.** A receiver may not be required to honor a lease, mortgage, secured transaction or other contract entered into by the owner or licensee of the facility or provider if the court finds that:

A. The person seeking payment under the agreement has an ownership interest in the facility or provider or was related to the licensee, the facility or the provider by a significant degree of common ownership or control at the time the agreement was made; or [1997, c. 610, §3 (NEW).]

B. The rental, price or rate of interest required to be paid under the agreement is in excess of a reasonable rental, price or rate of interest. [1997, c. 610, §3 (NEW).]

If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest that the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the facility or provider, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the term of the receivership. The court shall hold a hearing on the application within 15 days, and the receiver shall send notice of the application to any owners and mortgagees of the property at least 10 days before the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received that notice.

Notwithstanding this subsection, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

[ 1997, c. 610, §3 (NEW) .]

**4. Closing of facility or provider.** The receiver may not close the facility or provider without leave of the court. In ruling on the issue of closure, the court shall consider:

- A. The rights and best interests of the residents or clients; [1997, c. 610, §3 (NEW).]
- B. The availability of suitable alternative placements; [1997, c. 610, §3 (NEW).]
- C. The rights, interest and obligations of the owner and licensee; [1997, c. 610, §3 (NEW).]
- D. The licensure status of the facility or provider; and [1997, c. 610, §3 (NEW).]
- E. Any other factors that the court considers relevant. [1997, c. 610, §3 (NEW).]

When a facility or provider is closed, the receiver shall provide for the orderly transfer of residents or clients to mitigate transfer trauma.

[ 1997, c. 610, §3 (NEW) .]

#### SECTION HISTORY

1997, c. 610, §3 (NEW).

### §13005. TERMINATION OF RECEIVERSHIP

The receivership terminates when the court certifies that the conditions that prompted the appointment are corrected or, in the case of a discontinuance of operation, when the residents or clients are safely relocated. The court shall review the necessity of the receivership at least semiannually. [1997, c. 610, §3 (NEW).]

A receivership may not be terminated in favor of the former or the new licensee, unless that person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court. [1997, c. 610, §3 (NEW).]

#### SECTION HISTORY

1997, c. 610, §3 (NEW).

### §13006. LIABILITY OF RECEIVER

A person may not bring suit against a receiver appointed under section 13003 without first securing leave of the court. Except in cases of gross negligence or intentional wrongdoing, the receiver is liable in the receiver's official capacity only and any judgment rendered must be satisfied out of receivership assets. [1997, c. 610, §3 (NEW).]

#### SECTION HISTORY

1997, c. 610, §3 (NEW).

### §13007. COURT ORDER TO HAVE EFFECT OF LICENSE

An order appointing a receiver under section 13003 has the effect of a license for the duration of the receivership. The receiver is responsible to the court for the conduct of the facility or provider during the receivership, and a violation of regulations governing the conduct of the facility or provider, if not promptly corrected, must be reported by the department to the court. [1997, c. 610, §3 (NEW).]

#### SECTION HISTORY

1997, c. 610, §3 (NEW).

### **§13008. RULE-MAKING AUTHORITY TO IMPLEMENT RECEIVERSHIP LAW**

The department may adopt rules as necessary to implement this chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 610, §3 (NEW).]

#### **SECTION HISTORY**

1997, c. 610, §3 (NEW).



## Chapter 15: CHILDREN'S MENTAL HEALTH SERVICES

### §15001. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

**1. Blended funding; pooled funding; flexible funding.** "Blended funding" means funding from all sources from the budgets and funds of the departments that are combined to be used for the provision of care and services under this chapter. "Pooled funding" and "flexible funding" have the same meaning as "blended funding".

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**2. Care.** "Care" means treatment, services and care for mental health needs, including but not limited to crisis intervention services, outpatient services, respite services, utilization management, acute care, chronic care, residential care, home-based care and hospitalization services.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**3. Child.** "Child" means a person from birth to 20 years of age who needs care for one of the following reasons:

A. A disability, as defined by the Diagnostic and Statistical Manual of Mental Health Disorders published by the American Psychiatric Association; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

B. A disorder of infancy or early childhood, as defined in Disorders of Infancy and Early Childhood published by the National Center for Clinical Infant Programs; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

C. Being assessed as at risk of mental impairment, emotional or behavioral disorder or developmental delay due to established environmental or biological risks using screening instruments developed and adopted by the departments through rulemaking after consultation, review and approval from the Children's Mental Health Oversight Committee; or [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

D. A functional impairment as determined by screening instruments used to determine the appropriate type and level of services for children with functional impairments. The functional impairment must be assessed in 2 or more of the following areas:

- (1) Developmentally appropriate self-care;
- (2) An ability to build or maintain satisfactory relationships with peers and adults;
- (3) Self-direction, including behavioral control;
- (4) A capacity to live in a family or family equivalent; or
- (5) An inability to learn that is not due to intellect, sensory or health factors. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**4. Committee.** "Committee" means the Children's Mental Health Oversight Committee established in section 15004.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**5. Department.** "Department" means the Department of Health and Human Services.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

**6. Departments.** "Departments" means the Department of Corrections, the Department of Education and the Department of Health and Human Services.

[ 2003, c. 2, §108 (COR) .]

**7. Family.** "Family" means the child's family and includes, as applicable to the child, the child's parents, legal guardian and guardian ad litem.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**8. Other departments.** "Other departments" means the Department of Corrections and the Department of Education.

[ 2003, c. 2, §109 (COR) .]

**9. Program.** "Program" means the Children's Mental Health Program established in section 15002.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**10. Treatment.** "Treatment" means the same as "care," as defined in subsection 2, for the purposes of this chapter.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

#### SECTION HISTORY

1997, c. 790, §A1 (NEW). 1997, c. 790, §A3 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §§108,109 (COR). 2003, c. 689, §B6 (REV).

## §15002. CHILDREN'S MENTAL HEALTH PROGRAM ESTABLISHED

The Children's Mental Health Program is established to identify children with mental health needs and to improve the provision of mental health care to children and supportive services to their families. The program must track the provision of care and services, the progress of the departments in providing care and services, the development of new resources for care and services and the use of all types of funds used for the purposes of this chapter, including funds from the departments' own budgets or through blended, pooled or flexible funding. The program is child and family-centered, focusing on the strengths and needs of the child and the child's family and providing care to meet those needs. The program is intended to create a structure for coordination of children's mental health care provided by the departments. The program does not create any new entitlements to care or services and does not diminish any entitlements granted by state or federal law, rule or regulation. The program is under the supervision of the commissioner and a director of children's mental health services, who has lead responsibility for implementation, monitoring and oversight of the program. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

**1. Individualized treatment planning process.** The individualized treatment planning process is based on the needs of the child and includes the participation of the child's family with the child, the department and the other departments. The individualized treatment planning process considers short-term and long-

term objectives and all aspects of the child's life. Decisions in the individualized treatment planning process first address the need for safety for the child and then address the child's mental health and emotional, social, educational and physical needs in the least restrictive, most normative environment.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**2. Principles of care delivery and management.** Decisions about the delivery of care to a child are made and care is managed at the local level in accordance with the following principles.

A. Care is clinically appropriate and is provided in the least restrictive manner possible. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

B. Care is provided as close to a child's residence as possible. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

C. The program promotes prevention, early identification and intervention for children in need of care and at risk of developing emotional problems. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

D. Each child has access to the same choices for care, regardless of residence, through a case management system that coordinates multiple services in a therapeutic manner and adjusts to changing needs, including the provision of adult mental health services when appropriate. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

E. Planning for the delivery of care takes into account the advice of the community service networks established under section 3608. [2013, c. 132, §4 (AMD).]

[ 2013, c. 132, §4 (AMD) .]

**3. Care delivery and management practices.** Care delivery and management practices must adhere to the principles stated in subsection 2 and are subject to the requirements of this subsection.

A. Using the resources of the departments, the program must provide the child and family with a central location for obtaining information, applying and being assessed for care and supportive services, maintaining contact with case managers and department staff and, to the extent possible, obtaining care and supportive services. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

B. The delivery of care must be determined in accordance with subsections 1 and 2 using uniform intake and assessment protocols. Waiting lists may not be maintained if prohibited by law. The departments shall maintain records of all entries onto waiting lists with information about care that is needed and alternate or partial care that is provided. When the department releases waiting list information, that information may not identify the child or family by name or address. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

C. The system of providing care must be a functionally integrated, network-based system with the department as the single point of accountability. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**4. Grievance; appeal.** The provisions of this subsection govern the right to grievance and appeal. The department shall provide notice to children and their families and guardians about the right to an informal grievance process and a formal appeal under this section for the review of care for the child, including clinical diagnosis and care, and departmental decisions.

A. The departments shall adopt rules providing for an informal grievance process that may be initiated at the request of a child or the child's family. The informal grievance process, which may utilize mediation, must include a written decision with findings of fact by an impartial hearing officer within one week

of the filing of the grievance if mediation is not requested by the child or the child's family and, if mediation is requested, within 2 weeks of the filing of the grievance. Providers of care and advocates for the child may be heard at the request of the child or the child's family. The informal grievance process is provided in addition to any rights of appeal that may be available under law, rule or regulation. If the right to appeal is limited to a certain time period, that time period begins to run on the date of issuance of a decision under this paragraph. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

B. The child or the child's family may exercise any rights of appeal available by law, rule or regulation. The departments shall adopt rules providing for an appeal process that must include alternative dispute resolution and, notwithstanding any provision of state law or rule to the contrary, must provide that the commissioner or the commissioner's designee act as the decision maker in any hearing and issue a written decision with findings of fact. This paragraph does not supersede federal law. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

C. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**5. Public education program.** The departments shall conduct a public education campaign about mental health, the need for mental health care and the availability of care through the program. The campaign must include written materials; media presentations; and a toll-free telephone number for information, referral and access to the program. Public information must include a resource guide that contains information about departmental responsibilities, community-based and residential-based resources for care and services and grievance and appeals procedures. If the department maintains waiting lists for any care or services, information must be provided about the use of the waiting lists and what options are available for care and services.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**6. Rights protections; cultural sensitivity.** The program must protect the rights of children to receive care without regard to race, religion, ancestry or national origin, gender, physical or mental disability or sexual orientation.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**7. Rulemaking.** The departments shall adopt rules to implement this chapter. Rules in effect for care under the authority of the departments, prior to the adoption of rules pursuant to this subsection, remain in effect until the effective date of the new rules. In addition to the rule-making procedures required under Title 5, chapter 375, prior to adoption of a proposed rule, the department shall provide notice of the content of the proposed rule to the committee and the joint standing committee of the Legislature having jurisdiction over health and human services matters. When a rule is adopted, the department shall provide copies of the adopted rule to the committee and the joint standing committee of the Legislature having jurisdiction over health and human service matters. Unless otherwise specifically designated, rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[ 1997, c. 2, §57 (COR) .]

**8. Spiritual treatment.** Nothing in this chapter may replace or limit the right of any child to care in accordance with a recognized religious method of healing, if the care is requested by the child or by the child's family.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

#### SECTION HISTORY

RR 1997, c. 2, §57 (COR). 1997, c. 790, §A1 (NEW). 1997, c. 790, §A3 (AFF). 2007, c. 286, §11 (AMD). 2013, c. 132, §4 (AMD).

## §15003. RESPONSIBILITIES OF THE DEPARTMENTS

In addition to any responsibilities otherwise provided by law, the departments have the following responsibilities. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**1. Agreements between departments.** The departments shall enter into agreements that designate the department as responsible for the implementation and operation of the program and specify the other departments' respective responsibilities. The agreements must provide mechanisms for planning, developing and designating lead responsibility for each child's care and for coordinating care and supportive services.

The agreements must include memoranda of agreement that provide for clinical consultation and supervision, delivery of care, staff training and development, program development and finances. Revisions to the memoranda of agreement may be made after consultation with and subject to the approval of the committee.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**2. Coordination.** The department is responsible for coordinating with the other departments to:

A. Establish policies and adopt rules necessary to implement the program, including, but not limited to, policies and rules that provide access to clinically appropriate care; establish eligibility standards; provide for uniform intake and assessment protocols; adopt screening tools for functional impairment pursuant to section 15001, subsection 3, paragraph D; and provide for access to information among departments. Rules regarding functional impairments must be developed and adopted by the departments through rulemaking after consultation, review and comment by the committee pursuant to section 15504, subsection 2, paragraph A, subparagraph 3; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

B. Develop necessary community-based residential and nonresidential resources for care and supportive services; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

C. Provide clinically appropriate care in accordance with the memoranda of agreement executed pursuant to subsection 1, including providing all care provided under the authority of the Department of Health and Human Services through residential and nonresidential resources within the State by July 1, 2004; and [2003, c. 2, §110 (COR) .]

D. Monitor available care and supportive services, the extent of any unused capacity and unmet need, the need for increased capacity and the efforts and progress of the departments in addressing unmet needs. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

[ 2003, c. 2, §110 (COR) .]

**3. Medicaid rules.** The department, after consultation with the Department of Corrections and the Department of Education, shall adopt rules for the provision of mental health care to children under the Medicaid program. The rules must address eligibility and reimbursement for different types of care in different settings, including management of psychiatric hospitalization. Rules in effect prior to the adoption of rules adopted pursuant to this subsection remain in effect until the effective date of the new rules.

Rules for managed care initially adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and when first adopted must be adopted following the procedure for such rules.

[ 2003, c. 2, §111 (COR) .]

**4. Statutory responsibilities; services, benefits or entitlements.** Nothing in this chapter may be construed to constrain or to impair any departments of this State in carrying out statutorily mandated responsibilities to children and their families or to diminish or to alter any services, benefits or entitlements received by virtue of statutory responsibilities.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**5. Fiscal management.** Funds appropriated or allocated for the purposes of this chapter must be used to provide care, to administer the program, to meet departmental responsibilities and to develop resources for children's care in this State as determined necessary through the individualized treatment planning process pursuant to section 15502, subsection 1.

A. When care is provided for a child that costs less than the amount that had been budgeted for that care from funds within the budgets of the Department of Human Services, Medicaid accounts and the Department of Behavioral and Developmental Services, the savings in funds must be reinvested to provide care to children or to develop resources for care in the State. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF); 2001, c. 354, §3 (AMD).]

B. The departments shall adopt fiscal information systems that record appropriations, allocations, expenditures and transfers of funds for children's care for all funding sources in a manner that separates funding for children from funding for adults. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

C. The departments shall shift children's program block grant funding toward the development of a community-based mental health system that includes developing additional community-based services and providing care and services for children who are not eligible for services under the Medicaid program. The departments shall maximize the use of federal funding, the Medicaid program and health coverage for children under the federal Balanced Budget Act of 1997, Public Law 105-133, 111 Stat. 251. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

D. The departments shall work with the Department of Administrative and Financial Services to remove barriers to allow appropriate funds, irrespective of origin or designation, to be combined to provide and to develop the care and support services needed for the program, to use General Fund money to meet needs that are not met by other funds and to leverage state funds to maximize the use of federal funding for each child, including the use of funds under the Adoption Assistance and Child Welfare Act of 1980, Title IV-E of the Social Security Act, 42 United States Code, Sections 670 to 679a (Supplement 1997) and other federal funds for care delivered to children living at home and in all types of residential placements. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF); 2001, c. 354, §3 (AMD) .]

**6. Management information systems.** The departments shall work toward integration of management information systems to administer the program and to perform the functions provided in this subsection.

A. The management information systems must track all types of nonresidential and residential care provided for children and supportive services provided for their families; the extent of met and unmet need for care; the extent of any waiting lists used in the program; behavioral, functional and clinical information; the development of resources; and the costs of the program. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

B. Information on the care of children served through the program must be kept by treatment need, region, care provided, a child's progress and department involvement. Information on children who transfer from care out of the State to care in the State must be kept as part of the total system and must be kept separately. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

C. The departments shall work toward data collection systems that use compatible data collection tools and procedures and toward care monitoring and evaluation systems. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**7. Evaluation process.** The departments shall develop an evaluation process for the program that includes:

A. Internal quality assurance mechanisms, clinical progress and performance indicators and information on costs; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

B. System capacity and unmet need for care and department progress in responding to excess capacity and unmet need for care; and [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

C. Auditing as required by subsection 8. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

Copies of all evaluation reports must be provided to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the committee upon completion.

The department shall seek funding from grants and other outside sources for external evaluations on program effectiveness and cost effectiveness.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**8. Audits; financial reports.** The departments shall provide access to their books, records, reports, information and financial papers for federal and state audits for fiscal and programmatic purposes and shall cooperate with all requests for the purposes of auditing. Auditing must be done annually and may be retrospective as determined by the auditor. Reports resulting from audits are public information.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**9. Reports.** The department shall report by August 1st each year to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the committee on the following matters:

A. The operation of the program, including fiscal status of the accounts and funds from all sources, including blended, pooled and flexible funding, related to children's mental health care in the departments; numbers of children and families served and their residences by county; numbers of children transferred to care in this State and the types of care to which they were transferred; any waiting lists; delays in delivering services; the progress of the departments in developing new resources; appeals procedures requested, held and decided; the results of decided appeals and audits; and evaluations done on the program; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

B. The experiences of the departments in coordinating program administration and care delivery, including, but not limited to, progress on management information systems; uniform application forms, procedures and assessment tools; case coordination and case management; the use of pooled and blended funding; and initiatives in acquiring and using federal and state funds; and [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

C. Barriers to improved delivery of care to children and their families and the progress of the departments in overcoming those barriers. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

[ 2003, c. 367, §1 (AMD) .]

**10. Reporting on children's crisis services.** Beginning October 31, 2001, the department shall report by the last day of each month on the status of children's crisis services provided or requested under this chapter. The report must cover the number of children in crisis situations for the preceding month and the time it took to resolve the crisis situations and secure appropriate hospital or residential placements or crisis beds or in-home crisis supports for the children. The report must include all children in crisis situations, regardless of the source of payment for hospitalization, residential placement, crisis beds or in-home crisis supports. The report must protect the confidentiality of all persons involved in the situation as required by state or federal law, rule or regulation.

A. In preparing the report, the department shall make a reasonable effort to obtain information from general hospitals, psychiatric hospitals and children's residential programs. The department shall develop a standardized format for the reporting of data on a monthly basis and shall distribute the form to crisis service providers and children's residential programs electronically on the first working day of each month. [2001, c. 439, Pt. KKK, §1 (NEW).]

B. Crisis service providers and children's residential programs funded by the department shall report the information requested on the electronic forms under paragraph A to the department by the 15th of each month. [2001, c. 439, Pt. KKK, §1 (NEW).]

C. If the department determines that there is a substantial need for residential placement, increased hospital resources or community-based crisis services or that action may be required by the Legislature, the department shall highlight those issues in the report. [2001, c. 439, Pt. KKK, §1 (NEW) .]

D. The department shall provide the report, which is public information, to the Children's Mental Health Oversight Committee established in section 15004 and the joint standing committee of the Legislature having jurisdiction over health and human services matters. [2001, c. 439, Pt. KKK, §1 (NEW) .]

E. The provisions of this section must be accomplished within the department's existing resources. [2001, c. 439, Pt. KKK, §1 (NEW).]

[ 2001, c. 439, Pt. KKK, §1 (NEW) .]

#### SECTION HISTORY

1997, c. 790, §A1 (NEW). 1997, c. 790, §A3 (AFF). 2001, c. 354, §3 (AMD). 2001, c. 439, §KKK1 (AMD). RR 2003, c. 2, §§110,111 (COR). 2003, c. 367, §1 (AMD). 2003, c. 689, §B6 (REV).

### §15004. CHILDREN'S MENTAL HEALTH OVERSIGHT COMMITTEE

There is established the Children's Mental Health Oversight Committee to advise the departments and to oversee implementation of the program. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

**1. Membership.** The committee consists of the following 16 members:



A. Three representatives of the joint standing committee of the Legislature having jurisdiction over health and human services matters who must serve on the committee at the time of their appointments and who may continue to serve while they are Legislators until they are replaced by a new appointment. One member is appointed by the President of the Senate. Two members are appointed by the Speaker of the House, representing each major political party; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

B. One representative of the joint standing committee of the Legislature having jurisdiction over criminal justice matters, appointed by the Speaker of the House; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

C. One representative of the joint standing committee of the Legislature having jurisdiction over education and cultural affairs, appointed by the President of the Senate; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

D. One representative of the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs, appointed jointly by the President of the Senate and the Speaker of the House; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

E. The Commissioner of Corrections, the Commissioner of Education and the Commissioner of Health and Human Services, or designees of the commissioners who have authority to participate in full and to make decisions as required of committee members; [2005, c. 397, Pt. C, §20 (AMD).]

F. Three representatives of families whose children receive services for mental health, 2 of whom are appointed by the President of the Senate and one of whom is appointed by the Speaker of the House. One of the appointments of the President of the Senate to the initial committee must be for 2 years. All other appointments are for 3 years; [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

G. Three representatives of providers of children's mental health services who have clinical experience in children's mental health services, one of whom is appointed by the President of the Senate and 2 of whom are appointed by the Speaker of the House. One of the appointments of the Speaker of the House to the initial committee must be for 2 years. All other appointments are for 3 years; and [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

H. One representative of a statewide organization that advocates for children, appointed jointly by the President of the Senate and the Speaker of the House for a 3-year term. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

[ 2005, c. 397, Pt. C, §20 (AMD) .]

**2. Duties.** The committee shall undertake the following responsibilities:

A. Oversight, monitoring and review responsibilities, including the responsibilities to:

- (1) Receive reports and provide advice regarding children's mental health Medicaid waiver applications, in particular the managed care Medicaid waiver that must be submitted by January 1, 1999, unless an extension is agreed to by the committee, and progress in implementing managed care initiatives and memoranda of agreement executed by the departments;
- (2) Maintain contact with and receive reports from the quality improvement councils, the clinical best practices advisory group established under subsection 4 and other entities reporting to the committee;
- (3) Review and comment on rules as provided under this chapter;
- (4) Receive reports from the departments on the program, including its strengths and weaknesses and its administration, and on the process of transition of young adults to adult mental health care;
- (5) Receive reports from the departments pursuant to section 15003, subsection 9; and

(6) Gather facts regarding care and support services provided under this chapter and report its recommendations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters by October 1st each year and as frequently as the committee determines to be appropriate; and [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

B. Meeting every 2 months or more often, as the committee determines necessary. The committee shall elect a secretary from among its members who shall work with staff to keep and to distribute minutes to members and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs, the joint standing committee of the Legislature having jurisdiction over corrections matters, the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters. [1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF).]

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**3. Cochairs.** The President of the Senate and the Speaker of the House shall jointly select cochairs to plan for and to preside over meetings.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**4. Clinical best practices advisory group.** The committee shall appoint a clinical best practices advisory group to provide advice to the committee on children's mental health best practices. The advisory group must include not less than 3 children's mental health professionals, at least one of whom must represent private sector providers of care and at least one of whom must represent public providers of care.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**5. Reimbursement.** Members of the committee who are Legislators may be reimbursed for expenses and are entitled to legislative per diem for attendance at committee meetings. All other members serve voluntarily and without reimbursement.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**6. Staff.** The department shall provide staffing assistance to the committee. The committee may request staffing assistance from the Legislative Council. Staffing assistance provided by the Legislative Council must be secondary to the staffing responsibilities of the departments.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

**7. Public meetings and information.** The committee is subject to the freedom of access laws under Title 1, chapter 13, subchapter I.

[ 1997, c. 790, Pt. A, §1 (NEW); 1997, c. 790, Pt. A, §3 (AFF) .]

#### SECTION HISTORY

1997, c. 790, §A1 (NEW). 1997, c. 790, §A3 (AFF). 2005, c. 397, §C20 (AMD).

## Chapter 17: DEVELOPMENTAL DISABILITIES

### §17001. MAINE DEVELOPMENTAL DISABILITIES COUNCIL

**1. Establishment.** The Maine Developmental Disabilities Council, referred to in this section as "the council," is established as authorized by Title 5, section 12004-I, subsection 66 and in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402.

[ 2003, c. 417, §3 (NEW); 2003, c. 417, §4 (AFF) . ]

**2. Status.** The council is a public instrumentality of the State, and the exercise of the power conferred by this section is the performance of essential governmental functions. The council may not be considered a state agency for any purposes, including, but not limited to, budgeting, accounts and control, auditing and purchasing.

[ 2003, c. 417, §3 (NEW); 2003, c. 417, §4 (AFF) . ]

**3. Appointments.** The Governor shall appoint appropriate representatives to the council, as required under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, upon consideration of recommendations made by current members of the council.

[ 2003, c. 417, §3 (NEW); 2003, c. 417, §4 (AFF) . ]

**4. Duties.** The council shall perform its duties in compliance with the requirements of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

[ 2003, c. 417, §3 (NEW); 2003, c. 417, §4 (AFF) . ]

**5. Designated state agency.** Notwithstanding subsection 2, the Department of Administrative and Financial Services is the designated state agency for the purposes of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402. As the designated state agency, the department shall meet all requirements specified in 42 United States Code, Section 15025 but may assume no liabilities other than those set forth in 42 United States Code, Section 15025 in connection with the receipt of federal funds for the purpose of disbursement to the council.

[ 2005, c. 519, Pt. BB, §1 (AMD) . ]

**6. Council personnel and members.** As of the effective date of this section:

A. All employees assigned to the council who state that they wish to continue as employees of the council must be transferred from state employment to employment of the council in its capacity as an independent advisory agency; [2003, c. 417, §3 (NEW); 2003, c. 417, §4 (AFF) . ]

B. Accrued fringe benefits from state employment of transferred personnel, including, but not limited to, vacation and sick leave, health and life insurance and retirement credits, remain available to the transferred personnel; [2003, c. 417, §3 (NEW); 2003, c. 417, §4 (AFF) . ]

C. Members and employees of the council are not considered state employees for the purpose of the state civil service provisions of Title 5, Part 2 and chapter 372 or for any other purpose except as follows.

(1) Employees of the council, including employees hired after the effective date of this section, are deemed state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter 2.

(2) For purposes of the Maine Tort Claims Act, the council is deemed a governmental entity and its employees and members are deemed employees as those terms are defined in Title 14, section 8102; and [2003, c. 417, §3 (NEW); 2003, c. 417, §4 (AFF).]

D. An employee of the council may return to state employment at any time up to 2 years from the effective date of this section. Employees expressing such a preference must be placed on the appropriate registers maintained by the Department of Administrative and Financial Services, Bureau of Human Resources and must be treated as though on recall in accordance with current collective bargaining provisions. [2003, c. 417, §3 (NEW); 2003, c. 417, §4 (AFF).]

[ 2003, c. 417, §3 (NEW); 2003, c. 417, §4 (AFF) .]

**7. Council report.** The council, pursuant to its duties under subsection 4, shall provide information from the comprehensive review and analysis of services, supports and other assistance for persons with disabilities required by 42 United States Code, Chapter 144, Section 15024 (c) (3) to the Legislature by January 31st of each year.

[ 2007, c. 152, §2 (NEW) .]

#### SECTION HISTORY

2003, c. 417, §3 (NEW). 2003, c. 417, §4 (AFF). 2005, c. 137, §1 (AMD).  
2005, c. 519, §BB1 (AMD). 2007, c. 152, §2 (AMD).

## Chapter 19: ADVISORY COUNCILS

### §19001. ACQUIRED BRAIN INJURY ADVISORY COUNCIL

**1. Council established.** The Acquired Brain Injury Advisory Council, referred to in this section as "the council," is established to provide independent oversight and advice and to make recommendations to the commissioner.

[ 2011, c. 657, Pt. CC, §4 (AMD) . ]

**2. Duties.** The council shall:

A. Identify issues related to brain injury, including prevention and the needs of individuals with disabilities due to brain injuries and the needs of their families; [2007, c. 239, §2 (NEW) . ]

B. Recommend methods that will enhance health and well-being, promote independence and self-sufficiency, protect and care for those at risk and provide effective and efficient methods of prevention, service and support; [2007, c. 239, §2 (NEW) . ]

C. Seek information from the broadest range of stakeholders, including persons with brain injuries, their families, rehabilitation experts, providers of services and the public, and hold at least 2 public hearings annually, in different regions of the State, to generate input on unmet needs; [2007, c. 239, §2 (NEW) . ]

D. Review the status and effectiveness of the array of brain injury programs, services and prevention efforts provided in this State and recommend to the commissioner priorities and criteria for disbursement of available appropriations; and [2007, c. 239, §2 (NEW) . ]

E. Meet at least 4 times per year and by January 15th of each year submit a report of its activities and recommendations to the commissioner and to the Legislature. [2007, c. 239, §2 (NEW) . ]

[ 2007, c. 239, §2 (NEW) . ]

**3. Administrative support.** The department shall provide administrative support to the council.

[ 2011, c. 657, Pt. CC, §4 (AMD) . ]

**4. Membership.** The commissioner shall appoint 16 persons to serve as members of the council and shall annually appoint one person to serve as chair. Members serve 2-year terms. Members must represent the following persons and interests:

A. Two members with acquired brain injuries must represent persons with acquired brain injuries; [2007, c. 239, §2 (NEW) . ]

B. Two members must represent families of persons with acquired brain injuries; [2007, c. 239, §2 (NEW) . ]

C. Two members must represent advocates for persons with acquired brain injuries; [2007, c. 239, §2 (NEW) . ]

D. Five members must represent providers of services to persons with acquired brain injuries; and [2007, c. 239, §2 (NEW) . ]

E. Five members must represent state agencies with expertise in the areas of education, employment, prevention of brain injuries, homelessness, corrections and services to veterans. Members of the council who represent state agencies serve ex officio, without the right to vote, and shall provide data, information and expertise to the council. [2007, c. 239, §2 (NEW) . ]

[ 2007, c. 239, §2 (NEW) . ]

**5. Expenses.** Members of the council serve without compensation but are entitled to reimbursement of reasonable expenses for attending meetings of and serving on the council.

[ 2007, c. 239, §2 (NEW) .]

SECTION HISTORY

2007, c. 239, §2 (NEW). 2011, c. 657, Pt. CC, §4 (AMD).

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